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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 83.

ARTHUR R. RICHARDSON, APPELLANT,

vs.

BENJAMIN C. HARDWICK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

FILED OCTOBER 16, 1879.

SUPREME COURT OF THE UNITED STATES.

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INDEX.

	Original.	Print.
Waiver for citation	1	1
Precipe for writ error	2	1
Bill of complaint	3	1
Subpœna	13	5
Demurrer	15	6
Hearing on demurrer, &c	17	6
Answer	19	7
Replication	25	9
Depositions for complainant	27	9
Notice of taking depositions	31	11
Depositions for complainant	35	12
Stipulation as to documents in evidence	83	36
Testimony of B. C. Hardwick	85	36
Testimony of Mr. Eaton	129	59
Testimony of John Ward	133	61
Depositions for complainant	135	62
Affidavit of A. N. Spratt and stipulation	149	68
Note of issue, November term, 1877	153	70
Note of issue, June term, 1878	155	70
Memorandum of agreement on pleadings and proofs	157	70
Decree dismissing bill	159	70
Opinion of Judge Brown	160	71
Defendant's taxed bill of costs	170	74
Claim of appeal	172	76
Order allowing appeal	173	76
Copy bond on appeal	174	76
Clerk's certificate	176	77

1 *Waiver of citation.*

Circuit court of the United States for the eastern district of Michigan.
In equity.

ARTHUR R. RICHARDSON, COMPLAINANT,
v.
BENJAMIN C. HARDWICK, DEFENDANT.

The issuing & service of a citation on appeal of this cause to the Supreme Court of the United States is hereby waived by the defendant.

ALFRED RUSSELL,
Sol'r for Def't.

DETROIT, *Dec.* 28, 1878.

(Indorsed:) Cir. c't U. S., eastern district of Michigan. In equity. Arthur R. Richardson vs. Benjamin C. Hardwick. Waiver of issuing & service of citation by def't. Filed Dec. 28, 1878. A. Mandell, c'k.

2 In the circuit court of the United States for the eastern district of Michigan. In equity.

ARTHUR R. RICHARDSON, COMPLAINANT,
v.
BENJAMIN C. HARDWICK, DEFENDANT.

To the clerk of the said court:

The complainant having claimed in open court, there has been allowed an appeal from the decree in this cause dismissing the bill therein to the Supreme Court of the United States. You will please issue a writ of error in this cause to remove the record therein to said Supreme Court.

Y'rs,

D. C. HOLBROOK,
Sol'r for Compl't.

DEC. 28, '78.

(Indorsed:) Cir. c't U. S., eastern district of Michigan. In equity. Arthur R. Richardson vs. Benjamin C. Hardwick. Precipe for writ of error. Filed Dec. 28, 1878. A. Mandell, c'k. D. C. Holbrook, sol'r for compl't.

3 *Bill of complaint.*

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

To the judges of the circuit court of the United States for the eastern district of Michigan. In equity.

Your orator, Arthur R. Richardson, of the city of Alpena, Michigan, and who is a citizen of the State of Michigan, brings this his bill against Benjamin C. Hardwick, of Quincy, Massachusetts, and who is a citizen of the State of Massachusetts; and thereupon complaining, says:

First. That in the year 1867 your orator, who was engaged in the lumbering business at Alpena aforesaid, entered into a negotiation for

the purchaste from Theodore H. Eaton, of Detroit, of the following-described lands, situated in said State of Michigan, to wit: The northwest fractional quarter of the northwest fractional quarter of section one (1); the northeast fractional quarter, the east fractional half of the northwest fractional quarter, and the northeast quarter of the southeast quarter of section two (2); all in township number thirty (30) north, range six (6) east; also, the east half of the southwest quarter and the west half of the southeast quarter of section twenty-six (26); the east half of the southeast quarter and the southeast quarter of the northeast quarter of section thirty-four (34); the west half and the southwest quarter of the northeast quarter of section thirty-five (35); all in township
4 number thirty-one (31) north, range six (6) east.

That the agreed purchase price of said lands was ten dollars per acre; that your orator, being unable to furnish the money to pay for said lands, applied to the said Hardwick for a loan of the same; that said Hardwick consented to loan said money to your orator, and accordingly, in January, 1868, said Hardwick paid for your orator for said lands, to the best of your orator's knowledge, information, and belief, the sum of eight thousand one hundred and sixty-four $\frac{35}{100}$ dollars, being the sum of $9.50 per acre; that in consideration for said loan your orator was to pay said Hardwick ten per cent. interest thereon and a bonus of fifty cents per acre; and as a security therefor, and for no other purpose, said Hardwick was to and did receive a deed from said Theodore H. Eaton for said lands, in his own name; that said lands were superior pine lands and very valuable.

Second. That in the spring of 1868 said Hardwick proposed that if your orator would sell to him a one-half interest in said Eaton lands that they would purchase other pine lands jointly, the said Hardwick to furnish the money necessary therefor, and your orator to examine and look after the lands so purchased, the stumpage to be sold and the profits divided equally, after paying to said Hardwick ten per cent. interest on the moneys so advanced by him; that your orator ac-
5 cepted said proposition, and under and in pursuance of said arrangement the following-described lands were purchased of various parties, to wit: The west half of the northwest quarter and the southeast quarter of the northwest quarter of section twenty-five (25), in township twenty-nine (29), north range four (4) east; also the east half of the northeast quarter and the east half of the southeast quarter of section sixteen (16), in township twenty-eight (28) north, range three (3) east; also the south half of the southwest quarter of section sixteen (16), in township thirty (30) north, range three (3) east.

That the deeds for said lands were taken in the name of said Hardwick for the sole and only purpose of securing the payment of the moneys so advanced by him for your orator in the purchase thereof.

Third. That on the first day of October, 1868, your orator and said Hardwick entered into a written contract regarding said lands, a copy of which is hereto attached marked Exhibit A, and which your orator prays may be taken as a part of this his bill.

That according to the terms of said contract your orotor was to pay to said Hardwick one-half of the moneys advanced by said Hardwick for the purchase of said lands and for all other expenditures thereon, with interest thereon, at ten. per cent., in two equal annual payments.

6 That it was understood and agreed between your orator and said Hardwick that one-half of all receipts on sale of stumpage and timber from said lands received by said Hardwick should be

endorsed on said contract in payment of the moneys due from your orator.

That during the years of 1868 and 1869 your orator cut and took away from said lands a large amount of logs and timber, and paid the said Hardwick therefor, one-half of the value of which was to and should have been so endorsed as aforesaid on said contract.

Fourth. Your orator further shows that about the time said two years expired said Hardwick claimed that your orator had not paid the entire amount due on said contract, and it was then agreed that the time of payment of said moneys should be extended for one year from the 1st day of October, 1870. That during the lumbering season of 1870–1871 said Hardwick sold to one George Richardson, a brother of your orator, and to various other parties, large quantities of timber from off said lands, and received the money therefor, one-half of which sums belonged to your orator, and should have been indorsed on said contract.

That the amounts so as aforesaid received by said Hardwick prior to October 1st, 1871, for said timber, and belonging to your orator, were more than sufficient to pay the entire indebtedness of your orator
7 upon said contract, as your orator is informed and believes, but that if any sum does remain due from your orator thereon he is ready and willing to pay the same.

Fifth. That since said last-mentioned date said Hardwick has sold and conveyed to various parties all of said lands, excepting the east half of the northeast quarter and the east half of the southeast quarter of section sixteen (16), in township twenty-eight (28) north, range (3) east, and has received, or is to receive, therefor, as your orator is informed and believes over $30,000; that he now refuses to recognize your orator's interest in said lands, and denies that your orator has any interest therein, or in the proceeds thereof; and claims that your orator did not fulfil the terms of said contract within the time prescribed therefor; and he refuses to account to your orator for the moneys received by him upon the sale of said lands or the timber taken therefrom.

Sixth. That during the years above mentioned your orator was engaged with said Hardwick in other lumbering and business enterprises at Alpena aforesaid. That your orator kept no books of account of his transactions with said Hardwick, but relied upon said Hardwick to keep the same, so that your orator does not know the exact amount
8 paid by him to said Hardwick upon said contract, nor the amounts received by said Hardwick for said lands and timber.

Seventh. That as your orator is remediless at law, he therefore asks the aid of this court in the premises, as follows:

1. That the said defendant, Benjamin C. Hardwick, may answer this bill without oath (oath being waived).

2. That said written contract, dated Oct. 1st, 1868, may be decreed to be still binding and in full force.

3. That said Hardwick be directed to execute and deliver to your orator a good and sufficient deed of an equal undivided one-half interest in the portion of said lands so remaining unsold, as aforesaid.

4. That an account may be taken of all moneys received, or to be received, by said Hardwick for the said lands so sold by him, and for all timber or logs taken therefrom.

5. That after deducting therefrom the entire purchase price of said lands, together with all expenditures made thereon for taxes and other purposes, and the interest thereon at ten per cent, your orator may be

decreed to be entitled to one-half of the remainder, and that said Hardwick may be directed to pay the same to your orator.

6. That your orator may have such further or other relief as
9 the nature of the case requires, and as shall be agreeable to equity.

7. That a writ of subpœna issue out of and under the seal of this court directed to the said Benjamin C. Hardwick, defendant herein, thereby commanding him to appear before this court and answer all and singular the premises, and abide by and perform the decree of the court therein.

ARTHUR R. RICHARDSON.

D. C. HOLBROOK,
Sol'r & of Counsel for Compl'nt.

STATE OF MICHIGAN,
County of Alpena, ss:

On the 6th day of December, 1875, personally appeared before me the above-named Arthur R. Richardson, and made oath that he hard heard read the above bill by him subscribed and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters he believed it to be true.

J. D. TURNBULL,
Notary Public, Alpena County, Mich.

EXHIBIT A.

Pine lands.

W. ½ of NW. ¼ & SE. ¼ of NW. ¼ in sec. 25, town 29, R. 4 E.;
10 E. ½ of NE. ¼ & E. ½ of SE. ¼ of sec. 16, T. 28, R. 3 E.; S. ½ of *of* SW. ¼ of sec. 16, town. 30, range 3 E.; NW. ¼ of NW. ¼ of sec. 1, & NE. ¼ & E. ½ of NW. ¼ & NE. ¼ of SE. ¼ of sec. 2, town. 30, range 6 E.; E. ½ of SW. ¼ & W. ½ of SE. ¼ of sec. 26, & E. ½ of SE. ¼ & SE. ¼ of NE. ¼ of sec. 34, & W. ½ & SW. ¼ of NE. ¼ of sec. 35, in town. 31, range 6 east.

The above-described lands have been purchased by me under an arrangement with Arthur R. Richardson as follows: It is understood that said Richardson may become equally interested in the above lands by paying to me one-half the purchase-price of the lands together with an equal share of all expenditures made by me for taxes or any other purpose, and also ten per cent. interest on all capital furnished by me in connection with his half interest. It is further understood that the purchase-price of the lands bought of T. A. Eaton is to be reckoned at $10 per acre, and the terms of the above agreement are limited to two years from this date; said Richardson is to pay one-half his share in one year, and the balance in two years.

Alpena, Oct. 1st, 1868.

Arthur R. Richardson may cut timber on the within-described lands on the following terms: He is to pay $1.50 (one dollar and a half) per thousand feet, board measure, for all timber cut by him, and he
11, 12 further agrees to cut no less than twelve (12) thousand feet from each and every acre on which he may cut any, or in the event of his not doing so he agrees to pay for twelve thousand feet the same as though that amount had been cut by him. The logs are to be holden

for the stumpage, & to be his when paid for. It being understood that payment is to be made for the same when they come into market.

B. C. HARDWICK.
ARTHUR R. RICHARDSON.

ALPENA, *Oct.* 1*st*, '68.

(Endorsed:) Filed Dec. 10, 1875. A. Mandell, cl'k.

13 *Subpœna.*

Circuit court of the United States of America for the sixth circuit and eastern district of Michigan, sitting in chancery.

The President of the United States of America to Benjamin E. Hardwick, of Quincy, Massachusetts, who is a citizen of the State of Massachusetts:

You are hereby commanded to be and appear in the circuit court of the United States of America for the sixth circuit and eastern district of Michigan, sitting in chancery, before the judges thereof, at the district court room in the city of Detroit, on the first Monday of January next ensuing, then and there to answer unto a bill of complaint exhibited against you as defendant by Arthur R. Richardson, of Alpena, Michigan, and who is a citizen of the State and resident of the eastern district of Michigan, as complainant, and this you shall in no wise omit under the penalty of one thousand dollars.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this tenth day of December, in the year of our Lord one thousand eight hundred and seventy-five, and of the Indepence of the United States the one *hundred and one* hundredth.

ADDISON MANDELL, *Clerk.*
By JNO. GRAVES, *Dep'y Clerk.*

MEMORANDUM.—The above-named defendant is required to enter his appearance in this suit with the clerk of this court, at his office in the city of Detroit, on or before the day on which this writ of subpœna is returnable, otherwise the bill of complaint in this cause will be taken pro confesso against said defendant.

ADDISON MANDELL, *Clerk.*
By JNO. GRAVES, *Dep'y Clerk.*

14 EASTERN DISTRICT OF MICHIGAN, *ss:*

I hereby accept of due legal and personal service of the within writ on this tenth (10th) day of December, A. D. 1875, for said defendant within-named, in Detroit, in said district, by due authority from said defendant.

ALFRED RUSSELL,
Sol. for Def't.

(Indorsed:) No. 1980. Circuit court of the United States for the sixth circuit and eastern district of Michigan. In chancery. Arthur R. Richardson vs. Benjamin C. Hardwick. Subpœna. Returned & filed Dec. 10th, 1875. A. Mandell, cl'k. D. C. Holbrook, complainant's solicitor.

15 *Demurrer.*

Circuit court of the United States for the eastern district of Michigan. In equity.

ARTHUR R. RICHARDSON, COMPL'T,
vs.
BENJAMIN C. HARDWICK, DEF'T.

The demurrer of Benjamin C. Hardwick, defendant, to the bill of complaint of said Arthur R. Richardson, complainant:

The defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demur' showeth that the said complainant hath not in and by said bill made or stated such a cause as doth or ought to entitle him to any such or relief as is thereby sought and prayed for from or against this defendant.

Wherefore this defendant demands the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

ALFRED RUSSELL,
Sol. for Def't.

16 DISTRICT OF FLORIDA, *ss:*

Benjamin C. Hardwick, being duly sworn, deposes and says that he is the defendant in the above cause, and that the foregoing demurrer filed in his behalf in said cause is not interposed for delay.

BENJAMIN C. HARDWICK.

Sworn and subscribed this 9th day of March, A. D. 1876, before me.

JOHN E. HARTRIDGE,
Com'r of the Circuit Court of U. S. for Dist. of Florida.

I hereby certify that I have examined the complainant's bill of complaint in said cause, and that the foregoing demurrer to said bill of complaint, in my opinion, is well founded in point of law.

ALFRED RUSSELL,
Counsellor at Law, Griswold St., Detroit, Mich.

I certify that the above-named John E. Hartridge is a duly and legally appointed U. S. commissioner in and for the northern district of Florida, and the fifth judicial circuit.

[SEAL.]

PHILIP WALTER,
Clerk U. S. Dist. & Cir. Courts.

(Endorsed:) Filed March 14th, 1876. Jno. Graves, dep'y clerk.

17, 18 *Hearing on demurrer.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at

the district court-room, in the city of Detroit, on Monday the eighth day of May, in the year one thousand eight hundred and seventy-six:

Present, honorable Henry B. Brown, district judge.

ARTHUR R. RICHARDSON,
vs. } 1980. In equity.
BENJAMIN F. HARDWICK.

The demurrer of the defendant to the bill of complaint filed in this cause now coming on to be heard, is argued by Mr. Russell in support of said demurrer, and by Mr. Wasey in opposition thereto, and submitted.

19 *Answer.*

Circuit court of the United States for the eastern district of Michigan.
In equity.

The answer of Benjamin C. Hardwick, defendant, to the bill of complaint of Arthur R. Richardson, complainant.

First. As to the matters of the first article of said bill, defendant denies the same and the whole thereof.

Second. As to the matters of the second article of said bill, defendant denies the same and the whole thereof.

Third. As to the matters of the third article of said bill, defendant admits that the written contract marked A was executed, but explicitly denies that complainant, Richardson, was to have one-half of all receipts on sales endorsed on the contract, and also denies that there was any agreement that one-half of the payments made by complainant to defendant for stumpage were to be endorsed on the said contract.

Fourth. As to the matter of the fourth article of said bill, defendant avers that at the expiration of the two years which was limited in said contract as the time during which complainant might purchase a one-half interest in said lands, the said complainant had paid nothing whatsoever, and the defendant then agreed to extend the time
20 one year; and defendant denies that any receipts by him for stumpage sold during that year were to have been endorsed upon said contract for the amount of one-half of the total sum received as a payment by complainant, and denies that there was any agreement for such endorsing during the said extension of one year, or at any time, and also denies that such one-half, if endorsed, would equal the sum agreed to be paid by complainant.

Fifth. As to the matter of the fifth article of said bill, defendant denies that he has sold all the lands covered by the contract, and is to receive over thirty thousand dollars, but admits that he declines to recognize the claim set up on the part of complainant, and to account for any sales of land or stumpage.

Sixth. As to the matter of the sixth article of said bill, defendant states that he has no knowledge, and neither admits nor denies the same.

Seventh. Defendant states that when the original contract expired, as well as when it was made and entered into, the defendant was under no legal or moral obligation to grant to the complainant the privilege of becoming interested in the lands, but as a matter of favor gave complainant the memorandum marked A, which was kept in the posses-

sion of complainant, and the defendant had no copy nor any
21 writing by which complainant would have been held in case of the destruction of the timber by fire.

Eight. That the defendant sold complainant the right to cut timber on defendant's land at the price mentioned, but that it was never understood or agreed between them that in paying for the timber cut complainant would be making any payment for an interest in the said land, but the proceeds received by the defendant were simply to reduce the amount of investment.

Ninth. That down to November 14th, 1870, complainant had not only not bought an interest in said land, but owed defendant between nine and ten thousand dollars for loans, and so forth, so that defendant refused to extend the written agreement, but proposed to complainant that if he would pay up his debt to defendant in one year from October, 1870, and also pay for an interest in the land within the same time, defendant would then allow him to become interested. That in the spring of 1871 defendant went to Alpena and found that complainant was preparing to build a large and expensive brick dwelling for himself, and endeavored to pursuade complainant to use the money in paying defendant his debt, and also in paying for a half interest in the lands, as the extension time would expire in the coming autumn.
22 That complainant however built the most expensive house in the place, and at the expiration of the extension time in the autumn had done nothing towards paying for the land, and still owed the defendant the prior debt, two mor'gages, to secure which defendant has lately foreclosed and has been compelled to buy the land in himself. That since the expiration of the extension time above referred to, complainant applied to defendant to have the time for taking an interest in the land still further extended, which of course defendant declined.

Tenth. Defendant states that the language of the contract was that the complainant "may become equally interested in the above lands by paying one-half of purchase price." That said paper contains the entire agreement between the parties, and that it contains no agreement that one-half the sales of the lands made by defendant and one-half the sales of stumpage made by defendant should be applied towards the payment of one-half the purchase price by complainant, and defendant avers that no such payment was ever made for any such application.

Eleventh. Defendant avers that upon complainant's own showing he is not entitled to any relief as against the land or against this defendant, because—

(1.) Complainant never owned the lands.

(2.) He never made any payment towards the purchase price thereof.

23 (3.) He never incurred any risk or liability touching the lands.

(4.) After the lapse of four or five years, finding that the defendant has made prospective sales, and that the property has risen in value, he sets up this claim and is guilty of laches.

(5.) He was indebted to this defendant in large sums during the whole time covered by the contract and extension.

And lastly, complainant was not entitled to any application of the money arising from the sales of land and timber and stumpage towards the purchase price.

Twelfth. Defendant states that he happened to be in the city of Detroit, casually, about June, 1874, travelling away from his residence,

which is Quincy, Mass., and was served with process in a suit at law in the name of said complainant as plaintiff; that defendant is informed and believes it to be true that complainant Richardson was not then in Detroit, and had no knowledge of commencement of said suit, and that said suit was in reality brought by one George N. Fletcher, of Detroit, who appeared on the taking of testimony in said suit at law, claiming to represent said Richardson, and who, as deponent is informed and believes, is in reality managing this present suit in chancery; that said suit at law was discontinued upon the condition that defendant would appear voluntarily in this present suit in chancery;
24 that defendant believes that complainant Richardson does not in reality set up the claim which is the subject-matter of the bill, but permits the use of his name by said Fletcher, who desires to annoy and trouble this defendant.

Wherefore defendant prays that the said bill may be hence dismissed with costs.

BENJ. C. HARDWICK,
By ALFRED RUSSELL, *His Sol.*

ALFRED RUSSELL,
Sol., of Counsel for Def't.

(Endorsed:) Filed Oct. 18, 1876. A. Mandell, cl'k.

25, 26 *Replication.*

The circuit court of the United States for the eastern district of Michigan. In chancery.

The replication of Arthur R. Richardson, complainant, to the answer of Benjamin C. Hardwick, defendant.

This repliant, saving and reserving to himself now and at all times hereafter, all and all manner of benefit and advantage of exception which may be taken to the manifold insufficiencies of the said answer, for replication thereunto, say that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

D. C. HOLBROOK,
Solicitor for Complainant.

(Endorsed:) Filed Oct. 28, '76. A. Mandell, cl'k.

27 RICHARDSON }
vs.
HARDWICK. }

Depositions for complainant.

[Law office of Alfred Russell, 91 Griswold st., rooms 48 & 49.)

DETROIT, *Jan. 11th*, 1877.

J. H. STEVENS, Esq.,
Notary Public, Alpena, Mich.:

DEAR SIR: I have rec'd a notice to appear for the def't before you

on the 23rd, in the chancery case of Richardson vs. Hardwick, in the U. S. court. As it is quite probable that my client and myself will not be able to get there, and may find it necessary to cross-examine the witnesses hereafter, or to move to suppress parts of the testimony, I have to request that you will take down the testimony by question and answer, and not in narrative form. Please attach this letter to your return.

Truly yours,

ALFRED RUSSELL,
Sol. for Hardwick.

EXHIBIT A.

DETROIT, *Jan.* 18*th*, 1868.

A. R. RICHARDSON:

28 DEAR SIR: I have closed the trade with Eaton, and have a deed all right; have paid him considerable in cash, and balance in notes. I paid $9½ p'r acre, and Slawson is to pay the taxes. Slawson may try to collect taxes from you, but I think you had better do nothing about it, as by trade here I should not be willing to pay anything.

I have also arranged your stumpage matters with Eaton direct, and Slawson is to have nothing to do with it.

Would write you more, but am in a hurry; am to leave here to-night for the East. Say nothing to any one about this matter, and I will write you more fully soon.

Slawson says he means you shall pay taxes. I pay Eaton $9.00 p'r acre, and Slawson ½ p'r acre.

I have paid him nearly all now, and shall pay the balance as soon as taxes are arranged, so that you can settle your individual matters with Slawson independent of me.

Yours, in haste,

B. C. HARDWICK.

Please say to your brother Charles that I was informed that there had been no deposits lately to his credit in his bank.

(Exhibit B is the same as Exhibit A attached to the bill.)

29 EXHIBIT B.—*Pine lands.*

W. ¼ of N. W. ¼ & S. E. ¼ of N. W. ¼ in sec. 25, town 29, R. 4 E.; E. ½ N. E. ¼ & E. ½ of S. E. ¼ of sec. 16, town 28, R. 3 E.; S. ½ of S. W. ¼ of sec. 16, town 30, range 3 E.; N. W. ¼ of N. W. ¼ of sec. 1, & N. E. ¼ & E. ½ of N. W. ¼, & N. E. ¼ of S. E. ¼ of sec. 2, town 30, range 6 E.; E. ½ of S. W. ¼ & W. ½ of S. E. ¼ of sec. 26, & E. ½ of S. E. ¼ & S. E. ¼ of N. E. ¼ of sec. 34, & W. ½ & S. W. ¼ of N. E. ¼ of sec. 35, in town 31, range 6 east.

The above-described lands have been purchased by me under an arrangement with Arthur R. Richardson, as follows: It is understood that said Richardson may become equally interested in the above lands by paying to me one-half the purchase price of the lands, together with an equal share of all expenditures made by me for taxes or any other purpose, and also ten per cent. interest on all capital furnished by me in connection with his half interest. It is further understood that the purchase price of the lands bought of T. H. Eaton is to be reckoned at $10 per acre, and the terms of the above agreement are limited to two

years from this date. Said Richardson is to pay one-half his share in one year, and the balance in two years.

ALPENA, *Oct* 1*st*, 1868.

30 Arthur R. Richardson may cut timber on the within-described lands on the following terms: He is to pay ($1.50) one dollar and a half per thousand feet, board measure, for all timber cut by him, and he further agrees to cut not less than twelve (12) thousand feet from each and every acre on which he may cut any, or in the event of his not doing so, he agrees to pay for twelve thousand feet, the same as though that amount had been cut by him. The logs are to be holden for the stumpage and to be his when paid for, it being understood that payment is to be made for the same when they come into market.

B. C. HARDWICK,
ARTHUR. R. RICHARDSON.

ALPENA, *Oct.* 1*st*, '68.

31, 32 In the circuit court of the United States for the eastern district of Michigan. In chancery.

ARTHUR R. RICHARDSON }
vs. }
BENJAMIN C. HARDWICK. }

To the above-named defendant and to Alfred Russell, esq., his sol.:

Please take notice that Arthur R. Richardson and George Richardson, T. D. Spratt, Augustus F. Spratt, and Daniel Carter, all of Alpena, Michigan, are material witnesses, and that their testimony is required for the complainant in this cause, and that they reside in the county of Alpena, in this State, more than one hundred miles from the place of trial of this cause; and that the deposition of said witness will be taken before J. H. Stevens, esq., a notary public in and for the county of Alpena, at his office in the city of Alpena, in the county of Alpena, in this State, to be used as evidence on behalf of the complainant on the trial of this cause, on Tuesday, the 23rd day of January, A. D. 1877, at 10 o'clock in the forenoon of said day, at which time and place you are required to appear and put such interrogatories to said witness as you may think fit.

Yours, &c.,

D. C. HOLBROOK,
Sol. for Compl't.

Dated January 11th, 1877.

33, 34 STATE OF MICHIGAN,
Wayne County, ss:

Geo. E. Wasey, being duly sworn, deposes and says that he did, on the 11th day of January, 1877, serve a notice to take the deposition of the within-named witness in the within-entitled cause, of which copy the within and foregoing is a true copy, on Alfred Russell, esq., the solicitor for the defendant, by handing the same to him.

GEO. E. WASEY.

Sworn to and subscribed before me this 11th day of January, 1877.

W. M. LILLIBRIDGE,
Notary Public, Wayne County, Michigan.

35 *A. N. Spratt.*

In the circuit court of the United States for the eastern district of Michigan.

ARTHUR R. RICHARDSON }
vs.
BENJAMIN C. HARDWICK. }

The deposition of August N. Spratt, a witness produced, sworn, and examined by and before me, John H. Stevens, a notary public in and for the county of Alpena, on the twenty-third day of January, A. D. 1877, on behalf of the complainant in the above-entitled cause, pursuant to notice hereto attached.

AUGUST N. SPRATT says he resides in the city of Alpena, and is about thirty-eight years of age, and I have resided in the city Alpena for about ten years.

Ques. What business have you been principally engaged since you have been in Alpena.

Ans. Lumbering.

Ques. Do you know the complainant, A. R. Richardson?

Ans. I do.

Ques. How long have you known him?

Ans. I have known him for about ten years.

Ques. Where has he resided during that time?

Ans. In Alpena County.

Ques. Do you know the defendant; and, if so, for how long?

Ans. For about ten years.

Ques. Where has he resided?

36 Ans. At first in Alpena, and afterwards in Quincy, Mass., I think.

Ques. Do you know Theodore H. Eaton, of Detroit?

Ans. Only by reputation.

Ques. Do you know the Eaton tract, so called, of pine land, in the county of Alpena?

Ans. Yes, sir.

Ques. Did you ever cut any timber off of said land; and, if so, of whom did you buy the stumpage.

Ans. I have. I bought it of B. C. Hardwick, the defendant in this case.

Ques. What year was it that you made the contract?

Ans. In the fall of 1871, or the winter of 1871, & '2.

Ques. Where did you make the contract?

Ans. I was in Alpena, and Hardwick was in Massachusetts.

Ques. Did you see Hardwick in Alpena before the making of the contract?

Ans. I did.

Ques. Did you have any conversation with him about the purchase at that time?

Ans. I did have a conversation with him about the timber on the Eaton tract; about the purchase of it.

Ques. When and where was the first conversation that you had with him about this matter?

Ans. In the summer or fall of 1870, in Alpena.

Ques. Did you consum'ate at that time the purchase of any timber?

Ans. No, sir.

Ques. Why did you not?

Ans. Because of the request of Mr. Richardson, the complain-
37 ant in this case, that I should not.

Ques. State the conversation you had with Mr. Richardson about this matter, and when.

Ans. Here in Alpena; Mr. Richardson asked me if I had had any conversation with Hardwick about the purchase of this timber; I told that I had; he requested me not to consum'ate a trade, for the reason that it was liable to interfere with his interests in the timber, and I promised him that I would not do anything further about it without his consent.

Ques. When was the next time you had any conversation with Mr. Hardwick about the purchase of this timber?

Ans. In the fall of 1871.

Ques. Where did the conversation take place?

Ans. On a steamboat between here and Detroit, going down.

Ques. Will you give this conversation, as near as you can recollect, that you had with Mr. Hardwick at that time.

Ans. Mr. Hardwick was speaking to me about his affairs with Mr. Richardson. I asked him, referring to the promise I had made to Mr. Richardson, if he was at liberty to negotiate the sale of timber on said land. He answered that he presumed that he was, at the same time referring to some kind of an understanding between himself and Mr. Richardson. And at the same time advising me to see Mr. Rich-
38 ardson in regard to his giving his consent to the consummation of the trade.

Ques. Did you at this time consummate a trade?

Ans. No; I did not try.

Ques. Did you afterward see Mr. Richardson, the complainant, in regard to this timber; if so, about how long after, and when?

Ans. I did see him during the latter part of 1871, or the fore part of 1872, in Alpena.

Ques. At this time did you notify him of the conversation you had with Mr. Hardwick while going down on the boat, that you have stated in regard to the timber?

Ans. I did.

Ques. Did you make any arrangements about his interest at that time?

Ans. He gave his consent that I should go on and purchase the timber from Hardwick.

Ques. Had you at this time made a contract with Mr. Hardwick for the purchase of this timber, or did you make it afterwards?

Ans. I had not; I made it afterwards.

Ques. Had you before this time examined these lands?

Ans. I had, partially.

Ques. How much timber did you buy of Mr. Hardwick at this time?

Ans. What there was on one hundred and sixty acres of land.

Ques. At what time did you purchase?

Ans. During the lumbering season of 1871 & '2.

Ques. At the time you saw Mr. Hardwick on the boat, did he
39 assign any reason why you should see Richardson about his consent to the sale of the timber?

Ans. I think he referred to some promise or understanding where he was under obligation to notify Richardson before consum'ating a trade.

Ques. After you had seen Mr. Richardson, and obtained his consent

to the sale of the timber, did you notify Mr. Hardwick of that fact before you made the trade?

Ans. I think I did, at the comm'ent of the final negotiation of this trade.

Further taking of testimony is hereby adjourned until 2 o'clock p. m.

Jan. 23, at 2 o'clock p. m., the examination of Mr. A. N. Spratt continued.

Ques. Have you examined your papers so that you can now tell about the date of the contract with Hardwick for the timber on the Eaton land? If so, state.

Ans. It was in January, 1872; I think it was the 15th.

Ques. Was the contract in writing?

Ans. It was.

Ques. Where is the contract now?

Ans. I don't know I think I gave it to Mr. Hardwick upon the consum'ation of a new trade.

Ques. Give the description of the land from which the timber was taken, that you bought of Hardwick.

Ans. East half of the southwest quarter and the west half of
40 the southeast quarter of section twenty-six, town. thirty-one north, of range six east.

Ques. How much did you pay to Mr. Hardwick for timber you took from this land above described?

Ans. I paid him seven thousand dollars.

Ques. When did you pay it?

Ans. I don't know.

Ques. When were you to pay it under your arrangement with Hardwick?

Ans. In June or July, 1873.

Ques. Was the money paid under this contract above mentioned?

Ans. It was not.

Ques. Under what arrangement was it paid?

Ans. Under an arrangement entered into after this contract above referred was made.

Ques. How much interest, if any, did you pay Mr. Hardwick on this $7,000 *d's* on or before June or July, 1873?

Ans. I don't think I paid him any.

Ques. If you did pay him any, what was the rate per cent.?

Ans. Ten per cent.

Ques. The first contract was for stumpage by the thousand, was it not?

Ans. Yes, sir.

Ques. How much per thousand?

Ans. Two dollars and fifty cents.

Ques. When were you to pay according to that contract?

Ans. The first of July, 1872 & 1873.

Ques. How long after you made the first contract was it that you made the second, under which you made the payments?

Ans. It must have been made in 1873.

41 Ques. What was this seven thousand for?

Ans. It was payment in full for the land and timber as it was lumped off.

Ques. When you finally paid Mr. Hardwick this $7,000, how much interest did you pay him?

Ans. I cannot state precisely, but I think it was not less than fifteen hundred dollars, and it was at the rate of ten per cent. from the time it was due until it was paid.

Ques. Did you examine the balance of these Eaton lands, so called?

Ans. I did not.

Ques. Did you buy any other timber or lands from Mr. Hardwick, and if so, when?

Ans. I did, in the fall of 1872.

Ques. State the descriptions of the lands so bought or timber purchased, and the amount paid therefor.

Ans. I bought the northwest quarter of the northwest quarter & the south half of the northwest quarter of section twenty-five, in town. twenty-nine north, of range four east; and I paid eleven hundred & fifty dollars.

Ques. When did you pay it?

Ans. I don't know.

Ques. Do you recollect the date it became due?

Ans. I do not.

Ques. If it was not paid at the date it became due, did you pay interest until it was paid, and if so, at what rate?

Ans. I did pay at the 10 %, if it was not paid when it was due.

Ques. State whether this $7,000 *d.* & this $1,150 *d.*, have been paid by you.

42 Ans. They have been paid by me to Mr. Hardwick.

Ques. Did you buy any other land or timber of Mr. Hardwick than those above stated?

Ans. I think not.

A. N. SPRATT.

Subscribed and sworn to before me this 23rd of January, 1873.

J. H. STEVENS,
Notary Public for Alpena County, Mich.

Further taking of testimony is hereby adjourned until Jan. 24, at 9 o'clock a. m.

Daniel Carter.

The deposition of Daniel Carter, a witness produced, sworn, and examined by and before me, John H. Stevens, a notary public in and for the county of Alpena, on the twenty-fourth day of January, A. D. 1877, on behalf of the complainant in the above-entitled cause, pursuant to notice hereto attached.

DANIEL CARTER says: My age is sixty-three years; I reside in Alpena, and I have lived in Alpena since Nov. 26th, 1856; am by occupation a surveyor, land broker and real-estate agent.

Ques. Do you know the parties to this suit, and how long?

Ans. I do, and I have known them for more than ten years.

Ques. Did you in the year 1867 or 1868, deed any land to the defendant?

Ans. I deeded some lands to him in 1867.

Ques. Can you give the descriptions?

43 Ans. The west half of northwest quarter, and southeast quarter of northwest quarter of section twenty-five, in town twenty-nine north, of range four east.

Ques. Can you state the date of the deed to Hardwick?

Ans. It was given in May or June, 1867.

Ques. With whom did you make the bargain for the sale of the lands?

Ans. With A. R. Richardson, the complainant in this cause.

Ques. Give the facts in relation to this sale.

Ans. I was talking with Richardson about lands, and I told him that I had some lands that I was agent for that I wished to sell him, in town twenty-nine north, range four east; also, I had one hundred and twenty acres close by it of my own that I would sell him. I told him my price on both pieces, and he said he would go and look at it, and I gave him the minutes for that purpose, and, I think about one year afterwards, he came to me and said he would take my land, and ordered me to make a deed to Mr. Hardwick to that effect, as he stated then that he had a contract with Mr. Hardwick to furnish money for him to buy lands with, and I should take the deed to Mr. Hardwick and he, Hardwick, would give me the money for it.

Ques. What was the price per acre?

Ans. It was five dollars per acre.

Ques. Did you afterwards make a deed to Mr. Hardwick?

Ans. I did, and took it to Mr. Hardwick, and asked Hardwick if Richardson had said anything to him about my making a deed to him of some lands. Hardwick said he had, and he asked me if I had
44 made the deed, and I told him I had, and handed him out the deed. He then asked me if Richardson had been to look at the land, and I told him that he said he had, and that he was satisfied with it. Hardwick then paid me the money and I left.

Ques. Is that all the lands you ever sold to Richardson and deeded to Hardwick?

Ans. That is all.

DANIEL CARTER.

Subscribed and sworn to before me this 24' day of January, 1877.

JOHN H. STEVENS,
Notary Public.

The further taking of testimony is hereby adjourned until to-morrow a' 10 o'clock a. m.

JANUARY 25th, 1877, at 10 o'clock, a. m.

The deposition of Arthur R. Richardson, a witness produced, sworn, and examined by and before me, John H. Stevens, a notary public in and for the county of Alpena, on the twenty-fifth day of January, 1877, on behalf of the complainant, in the above-entitled cause, pursuant to notice hereto attached.

ARTHUR R. RICHARDSON says: He resides in the county of Alpena, and has resided in said county for about 13 years, and he is 48 years of age, and is the complainant in the above-entitled cause, and by occupation is a lumberman and farmer.

Ques. Do you know the defendant; and, if so, how long?

Ans. I have known him nearly ever since I have been here.
45 Ques. Do you know Theodore H. Eaton, of Detroit?

Ans. I do.

Ques. How long have you known him?

Ans, I have known him for about ten years.

Question. Do you know a tract of land in this county known as the Eaton tract, so called?

Ans. I do.

Ques. State where it is situated?

Ans. It is situated about fourteen miles from here, in T. 30 N., R. 6 east, and in T. 31 N., R. 6 east.

Ques. Did you at any time become the purchaser of said tract of land?

Ans. Yes, sir.

Ques. When was it?

Ans. It was late in the fall of 1867.

Ques. Of whom did you make the bargain?

Ans. I made the bargain with one Amzi Slawson, as agent for Theodore H. Eaton, but the final consummation of the trade was made and closed up with Theodore H. Eaton, of Detroit.

Ques. What was the price per acre?

Ans. I was to pay ten dollars per acre; nine dollars to Eaton and one dollar to Slawson?

Ques. What was this one dollar to Slawson?

Ans. I understood it to be his commission for selling the land.

Ques. Where were the preliminary arrangements made with Slawson?

Ans. Here in Alpena.

Ques. Was the defendant, Hardwick, here at that time?

Ans. I think he was.

Ques. Under your arrangement with Slawson, how were you to pay for the lands?

46 Ans. I bought them on time, but I do not remember the length of time.

Ques. How much were you to pay down?

Ans. I think one thousand dollars.

Ques. What arrangement did you make to get it?

Ans. If I did not have it of my own means, I had an arrangement with defendant Hardwick by which I could get what I wanted to complete this trade, but I don't remember whether I needed anything from Hardwick or not.

Ques. Did you have any talk with Hardwick about this trade for the Eaton lands here in Alpena before the trade was consum'ated in Detroit?

Ans. I did.

Ques. Did you go to Detroit yourself at the time this trade was to be consum'ated?

Ans. I did not.

Ques. Who was to represent you in Detroit in this matter?

Ans. Mr. Hardwick, the defendant in this cause.

Ques. Was the trade or sale made in Detroit in according with your arrangements made here in Alpena with Slawson?

Ans. It was not.

Ques. Did you inform the defendant Hardwick, before he went to Detroit, of the arrangement you had made with Slawson?

Ans. I did.

Ques. About what time of the year was it that def't Hardwick left here to go to Detroit?

Ans. It was late in November, 1867, I think.

Ques. Did said Stawson go to Detroit with said Hardwick?

Ans. I think he did; it was expected they would be there together.

Ques. When was the first time that you learned that a different arrangement had been made at Detroit than the one you had made with Slawson here in Alpena?

47 Ans. In the last of January or first of February, 1868.

Ques. From whom did you learn?

Ans. From the defendant.

Ques. How were you informed?

Ans. I was informed by letter from defendant, dated at Detroit, January 18th, 1868, which I received soon after.

Ques. Witness is shown by counsel a paper writing, purporting to be a letter from the defendant to the complainant, dated Detroit, January 18th, 1868, and asks witness if that is the letter referred to above, which he received from the defendant as above stated?

Ans. Witness swears that it is.

Ques. Whose signature is attached to this letter, and in whose handwriting is the letter?

Ans. It is in the handwriting of B. C. Hardwick, the defendant, and signed by him.

(Letter is offered in evidence, and marked Exhibit A.)

Further taking of testimony is hereby continued until to-morrow at 9 o'clock a. m.

JANUARY 27TH, 1877.

The further taking of testimony of Arthur R. Richardson is again resumed.

Ques. What time in the year was it that you examined these Eaton lands, and how long before Hardwick and Slawson went below to consum'ate the purchase?

Ans. I should think it was in the month of December; there was snow on the ground when I went to look at the lands, and Hardwick and Slawson went very soon after I got back, and had concluded to take the lands; and, upon reflection, I think they went down in De-

48 cember, and I can't say whether by boat or stage, but they may have gone earlier in the season.

Ques. When you came back from examining the timber, what did you inform Slawson with regard to the same?

Ans. I told him the land was satisfactory, and I would close up the trade under his proposition, and that the defendant would go below with him and close up the trade for me.

Ques. At this time were you in the habit of getting advances from defendant?

Ans. I was; he was in the habit of loaning money to me from time to time, for over a year prior to this; and at this time I had an arrangement with him whereby he advanced me such money as I should need.

Ques. When you received the letter, Exhibit A, from that did you understand fully how the trade had finally been consum'ated?

Ans. I did not.

Ques. Did you receive any other information that winter in relation to the matter?

Ans. Upon reflection, I think I did; I think Mr. Slawson came back here as soon as the trade was closed up, and related the whole transaction.

The further taking of the testimony is hereby adjourned until Monday, January 29th, 1877, at 2 p. m.

JANUARY 29TH, at 2 o'clock p. m.

The testimony of Arthur R. Richardson is resumed.

Ques. When did you next see defendant, Hardwick, after the Eaton purchase?

Ans. In the month of May following, I think.

49 Ques. Where did you see him?

Ans. In Alpena.

Ques. What conversation, if any, did you have with defendant at that time, in regard to said purchase?

Ans. He related all the transaction. He said he took the deed in his own name, and said he would let that go in with the same arrangement that he had made previously.

Ques. Did he state why he had taken the deed in his own name, and not in your name?

Ans. He did; he said there were other parties that were trying to get the land from Slawson when he got down there, and in order to get the land, and make a sure thing, he had to advance more money than I had agreed upon with Slawson; and that I might have the land upon our previous arrangement about lands. He told me that he would take the place of Mr. Eaton in said sale, and that he had the deed made in his name from Eaton for his security for the money, and that all he wanted was his money and interest, and he could wait as well as Mr. Eaton.

Ques. Did he state who were after the lands at that time?

Ans. He did; he said C. W. Richardson and H. R. Morse wanted to purchase at the same time of Slawson, and that he was afraid that they would give a larger bonus to Slawson, and I would lose the lands.

Ques. What did he say, if anything, about the bonus to Slawson?

Ans. He said he divided the one dollar per acre bonus with Mr. Slawson; the fifty cents per acre that he got was for commission

50 for advancing more money than he expected, and that Slawson agreed that if he would perfect the trade as he did, he would divide the bonus with him, being a bonus of one dollar per acre.

Ques. Did he say how much per acre he gave Eaton?

Ans. He did; he said he paid Mr. Eaton nine dollars per acre, and Slawson fifty cents per acre, and that the other fifty cents per acre he put in his own pocket, and that I could have it at ten dollars per acre, as per my understanding with Mr. Slawson.

Ques. What arrangement, if any, did you have previous to this conversation with the defendant in regard to his advancing money for you to purchase land with, and when was it made?

Ans. I had an arrangement with defendant about buying some lands, that he was to furnish the money, and would purchase the lands, and would take the deed in his own name and hold them as security until such time as I should pay him the principal, and ten per cent. interest; then he would deed me the lands. This arrangement was made in the month of May, 1867.

Ques. Under this arrangement of May, 1867, what lands, if any, did defendant advance money for and take the deed in his own name as stated above?

Ans. They were three small lots, which I had looked up a short time before; one lot of one hundred and twenty acres, which I purchased of

Daniel Carter, described as follows: West half of northwest quarter, and southeast quarter of northwest quarter of section twenty-five (25), in town. twenty-nine (29) north, of range four (4) east, which I
51 bought for five dollars per acre. Also, 160 acres, described as follows: East half of northeast quarter, and east half of southeast quarter of section sixteen (16), in town. twenty-eight (28) north, of range three (3) east, and south half of southwest quarter of section sixteen (16), in town. thirty (30) north, of range three (3) east. The last three descriptions were primary school lands, the price was four dollars per acre, and I gave the defendant the minutes of said lands, and he located them for me under said arrangement, and taking the patents for the security.

Ques. Did you look up and examine the lands that you gave the defendant the minutes of before they were purchased?

Ans. I did, all but one lot of 160 acres, the minutes of which I bought of Dumal P. Baker, and paid him fifty dollars for it out of my own money.

Ques. Why did you not negotiate the purchase of the Eaton lands, under the arrangement made in 1867 through defendant?

Ans. Because Mr. Slawson had arrangement with Mr. Eaton in regard to selling the lands on such easy terms, that I thought I could handle it myself; also, I thought the trade to be a very rich one, and I thought I could carry it myself, and I preferred to do so.

Ques. At the time of the conversation had with defendant, as stated above, in the spring of 1868, in which he explained to you how he consummated the trade with Mr. Eaton, what assent, if any, or reply did you make to him?

52 Ans. After some conversation in regard to the matter I told him I was satisfied with the arrangement that he had made, as it was better for me to deal with him, he being much of his time in Alpena.

Ques. What was the reason, and for what purpose were the lands that you purchased in the spring and summer of 1867 deeded to defendant?

Ans. For the purpose of securing him for advances made in purchasing the lands.

Ques. Did he inform you in the spring of 1868, in the conversation above referred to, of the reason why he had taken the deed from Eaton in his own name?

Ans. He did; he said he would give me as good terms as Eaton was to, and that he took the deed in his own name as security only.

The further taking of testimony is hereby adjourned until to-morrow, January 30th, 1877, at 9 o'clock a. m.

JANUARY 30TH, 1877.

The taking of testimony in the above-entitled cause is hereby resumed.

The testimony of Arthur R. Richardson is resumed at 9 o'clock a. m.

Ques. At this conversation in the spring of 1868 that you had with the defendant in regard to the purchase of the Eaton land, how were said lands treated?

Ans. They were treated as my lands.

Ques. Was the defendant satisfied and willing that they should go in as your lands under the arrangement you had with him in 1867?

Ans. He was; after having understood the situation of the
53 lands and timber he proposed it, and said he had confidence in me in regard to the situation and value of the land, and my judgement in regard to the same, and that the security was sufficient.

Ques. When was the first conversation you had with defendant, if you had any, about his taking an interest in said lands so purchased by you?

Ans. Can't state exactly, but it was some time during the summer of 1868, and some time after the conversation above referred to had in the spring.

Ques. Where did this take place?

Ans. I think it was in William Hitchcock's office, in Alpena.

Ques. Will you give the conversation?

Ans. As near as I can recollect it was as follows: Defendant, Hardwick, asked me to go into Mr. Hitchcock's office, that he had some business of importance that he wished to talk to me about; he said, after explaining to me the amount of lands I had purchased, it would be quite a load for me to carry alone; that he proposed to take a one-half interest with me, and advised me that I had better do it, as it might embarrass me to carry it all alone, in connection with my other business. He also said, or stated in the conversation, he had plenty of chances to invest in pine lands before, but had always declined on account of not knowing himself about pine lands; he also said he had such confidence in my judgement in regard to pine lands and honesty that he could deal with me safely in pine lands, but always before this he had been afraid he would be cheated in dealing with parties in pine lands.

54 Ques. What reply did you make to this proposition of the defendant?

Ans. I said to him, I had always been opposed to being in company with any one in any business, but under the circumstances I thought it would be better for me to do so, and accepted his proposition.

Ques. In what way did the defendant propose to take an interest?

Ans. He proposed to take an undivided one-half interest, and that I should pay him ten per cent. interest on my half of the investment; the understanding was that I was to look after the lands.

Ques. What do you mean by the term, that you were to look after the lands?

Ans. I mean that the land was to look over by some one in regard to trespassers, or other injuries that might come against the timber, and this was my special business to do.

Ques. What did you do after that in relation to these lands?

Ans. I looked them over frequently, all except one lot that was a long way from any cutting, so that it was not exposed to any trespassers.

Ques. How were sales of timber or lands to be made, and by whom?

Ans. We were to sell and apply one-half of the proceeds on my share of the purchase-money, and the sales to be made by myself and defendant jointly.

Ques. Did you afterwards make a memorandum or contract of your agreement?

Ans. We did.

Ques. About how long afterwards?

55 Ans. I can't state how long afterwards, but it was about the first of October, 1868.

Ques. How did you come to reduce your agreement to writing?

Ans. As the defendant was about leaving Alpena, and be gone until the next season, I told him I thought he had better give me a little memorandum of our agreement, as life was uncertain, but if we both lived I had confidence that all would be all right without a written agreement; he said that was righ', and did make a memorandum or contract.

(Here counsel for complainant hands witness a paper writing, dated Alpena, Oct. 1st, 1868, purporting to be a memorandum of agreement between the parties, and asks witness if that is the agreement, and whose signatures are attached thereto, given to him by defendant at that time.)

Ans. That is the memorandum referred to, and the signatures are those of B. C. Hardwick and mine.

Ques. Whose handwriting is the memorandum or contract in?

Ans. In the handwriting of defendant, Hardwick.

(Counsel for complainant offers in evidence the memorandum or contract shown witness, and the same is received and marked Exhibit B.)

Ques. Did you or not examine Exhibit B at the time defendant gave it to you, so that you understood the purport of it?

Ans. Mr. Hardwick read it all to me, I don't know that I did understand the real purport of it.

Ques. What objection, if any, did you make?

Ans. I did not make any.

56 Ques. Why?

Ans. I had confidence in Hardwick that all would be fair on his side, and for that reason did not examine contract particularly.

Ques. Prior to this time had you cut any timber off from the lands mentioned in Exhibit B?

Ans. I had.

Ques. How much and when?

Ans. In the month of March, 1868, I cut about two hundred and fifty thousand feet, but can't state exactly the amount, as I have lost my scale book of that scale, but the amount will not vary many feet from 250,000.

The further taking of testimony is continued until 2 o'clock p. m.

At 2 o'clock p. m. the testimony of A. R. Richardson, the complainant, is again resumed.

Ques. In the spring of 1868, did you inform the defendant that you had cut any timber off from the Eaton lands, so called?

Ans. I did.

Ques. How did you come to cut this amount at that time?

Ans. Because I had bought the lands and I wanted a little more timber, and I went there and cut this timber to make out the winter's work.

Ques. Where were you lumbering in the winter of 1867–'8.

Ans. I was lumbering on the opposite side of Been Creek, from where these logs were banked, and near the Eaton lands.

Ques. After the time you had the talk with defendant about his taking an interest in the lands, did you locate any other lands

57 in which defendant was to have an interest?

Ans. I did not.

Ques. Why did you not?

Ans. Because I had as much as I thought I should be able to pay for.

Ques. Did you lumber on these lands after the agreement with the defendant that he was to take any interest?

Ans. I did in the winter of 1868 & '9.

Ques. What arrangement did you have with the defendant about taking off the timber?

Ans. Under the arrangement stated in Exhibit B.

Ques. Under said arrangement, on what land did you cut timber during the winter of 1868 & '9?

Ans. On the east half of southeast quarter and southeast quarter of northeast quarter of section thirty-four and on the west half of the southwest quarter of section thirty-five; all in town thirty-one north, of range six east, being a part of the Eaton purchase.

Ques. How much timber did you cut that winter from said Eaton lands, as above stated?

Ans. My scale book shows two million four hundred and eighty-one thousand four hundred and five feet.

Ques. Is that the correct amount?

Ans. I had always had the impression without looking at my scale book, that there was a little more than one hundred thousand feet more, but there was that amount at least.

Ques. In lumbering these lands, did you cut all the timber suitable for saw logs?

Ans. I did not.

Ques. Why did you not?

58 Ans. Because I had agreed to cut not less than twelve thousand feet per acre, to satisfy Mr. Hardwick that there was that amount at least on the land.

Ques. Why was the amount of twelve thousand feet per acre put into the agreement marked Exhibit B to be cut by you?

Ans. Because I had represented to Mr. Hardwick that the Eaton lands would cut from twelve to twenty thousand per acre, and I knew it was safe to make the agreement in that way.

Ques. Did you settle with Mr. Hardwick, the defendant, and pay him for the stumpage cut from said Eaton lands that season, as you have before stated?

Ans. I did.

Ques. When, and at what rate per thousand?

Ans. In the summer of 1869, but can't give the exact date, at the rate of one dollar and fifty cents per thousand feet.

Ques. How was the price of this stumpage to be applied under your agreement?

Ans. One-half was to be applied under the contract in payment for my part of the lands, and the other half was to belong to defendant.

Ques. Did you, in this settlement with defendant, account for the timber you had cut in the spring of 1868 from off these lands, and at what price per thousand?

Ans. I think I settled with him for that amount in 1868, and not in 1869.

Ques. How did you come to settle with him in 1868 for the timber cut in the spring of 1868?

Ans. In order to keep his security good, he thought I ought to pay
59 him stumpage for the timber I took off. And I believe I paid him two dollars per thousand feet, which was to apply on the purchase price of the Eaton lands.

Ques. Under your arrangement with the defendant, when he took an interest in the lands described in Exhibit B, how were the proceeds arising from the sale of lands or the timber thereon to be applied?

Ans. To be applied on the purchase money of the lands until the pur-

chase price was paid, including ten per cent. interest on my half, and after that the money was to be divided equally between us.

Ques. To whom was the proceeds of the sales of the timber to be paid taken from land mentioned in Exhibit B?

Ans. All to be paid to Mr. Hardwick until the purchase price was paid.

Ques. Were you engaged in lumbering during the winter of 1869 & '70, and where?

Ans. I was on the upper South Branch, in Alpena County, in 1869 & '70, and in 1870 & '71.

Ques. Did you lumber on any of the land mentioned in Exhibit B those winters?

Ans. I did not.

Ques. Why did you not?

Ans. Because there was different parties applying to the defendant for the timber on these lands, and he had made them a proposition before he had an opportunity to see me about it, and I think I was out of town at the time, and my desire was to hold the balance of the timber, as it was valuable lands to keep, as there was no danger of fire, and the lands were increasing in value fast, and the taxes were small.

Ques. Did the defendant inform you, when you saw him, upon your return to Alpena, that he had made any proposition to parties to
60 sell timber from any of the lands mentioned in Exhibit B, and to whom?

Ans. He did; he said he had made my brother, George Richardson, a proposition to sell him timber from the Eaton lands, to be cut the coming winter.

Ques. Was this timber sold to George Richardson in the fall of 1869 or fall of 1870?

Ans. I had the impression that it was in the fall of 1869, but upon reflection I am convinced that it was in the fall of 1870.

Ques. Were any of the lands mentioned in Exhibit B lumbered in the winter of 1869 & '70.

Ans. I think they were not.

Ques. When the defendant informed you in the fall of 1870 of the proposition to sell timber to George Richardson, what reply, if any, did you make to him?

Ans. I asked him if he had confined him to any particular description. He said he had not. I told him that he had made quite a mistake, as I had the lands divided in my own mind where each winter's operation should be made, and told him he should confine him to some of those places, as it might make more than a dollar on a thousand on the price on account of the distance to haul and the quality of the pine. Mr. Hardwick then replied that he did not like to go back on his word, and thought it was best to carry out the proposition. I told him I would try and stand it, as my brother would get all the benefit, and only one-half would come out of me, but to confine him to such description of land as I should mention. He then promised to carry out the
61 proposition with my brother according to my suggestions.

Ques. Have you stated all the conversation had with the defendant at this time?

Ans. No; I have not.

Ques. Will you state the balance?

Ans. After we concluded the proposition in regard to the sale to George Richardson, as before stated, I then explained to defendant how these lands were situated, and told him that all lands were not worth the

same price per thousand for stumpage, as some pine was a great deal better in quality and in a great difference in their location as to the water, and told him that he ought not to make any proposition hereafter with parties for sale of timber with' consulting me, as I understood the location of all the timber and knew its value, and it was an easy matter to be cheated out of a thousand dollars in the sale of small pieces of these lands. He then said that he could see the point, and would not make any more sales or propositions without seeing me.

Ques. Did George Richardson go on and cut on these lands during the winter of 1870 & '71?

Ans. He did, I think, in that winter; at any rate he cut timber from off these lands, but I am not certain as to the date.

Ques. Can you state the time that you had the conversation with the defendant, as above stated?

Ans. I cannot exactly; but I think it was either in September or October, 1870.

Ques. What arrangements, if any, were made with defendant with regard to the extension of time under which you were to make your payments of the one-half of the purchase price of land described in Exhibit B?

62 Ans. At the time limited by contract, Exhibit B, I had not made all the payments for my one-half interest, and asked defendant for extension of time for one year. He then agreed to give me one year more, as requested, and subsequently on the boat, before defendant left for home, he said that he was not only willing, but very anxious that I should retain my interest in said lands, and cheerfully gave the time asked, as he could see by our previous conversation how liable he was to be beaten by parties wishing to buy, and he wanted some one associated with him that he could rely on.

The further taking of testimony is hereby adjourned to to-morrow at 9 o'clock a. m.

JANUARY 31ST, 1877, at 9 o'clock a. m.

The testimony of ARTHUR R. RICHARDSON is resumed.

Ques. Was this agreement for extension of time made in 1870 in writing?

Ans. It was not; it was verbal.

Ques. Previous to the sale of stumpage to George Richardson, in year 1870, did you have any conversation with the defendant in regard to the sale of stumpage on the lands, or about your lumbering on them yourself? If so, state it.

Ans. I did. Some time in the course of the summer season of 1869 and 1870 Hardwick came to me and asked me if I had not better cut or sell stumpage the next winter on these Eaton lands. He thought we had better, for it would reduce the investment some, and we would not have so much to risk. I then told him that as for my part I had rather hold that pine, as it was a large amount per acre, and would in-

63 crease in value faster than most other lands; also that I told him we could hold that without risk of fire; and to this the defendant consented. In the season of 1870 I had in substance about the same conversation with defendant after his proposition to sell George Richardson timber, which I have previously stated.

Ques. Did you lumber your own lands in the winters of 1869 & '70 and and 1870 & '71 when you lumbered on the Upper South Branch?

Ans. I did in the first season referred to. In the winter of 1870 &

'71 I bought other lands for the purpose of lumbering rather than to lumber on the Eaton lands, which I considered very valuable lands to keep.

Ques. Up to the first of October, 1870, how much, if anything, had you paid to defendant upon your half of the purchase price of the lands mentioned in Exhibit B?

Ans. I cannot give the exact sum, but it was one dollar per thousand, I think, for what I cut in the spring of 1868, and seventy-five cents per thousand for what I cut in the winter of 1868 & '9, all amounting to about two thousand dollars, the same having been paid under our agreement to apply upon my half of the purchase price of the lands mentioned in Exhibit B.

Ques. To whom was the money paid for the timber that was cut in winter of 1870 & '71 by George Richardson & others from these Eaton lands?

Ans. It was paid to the defendant. None of it was paid to me.

Ques. How should the amount so paid by George Richardson and others for stumpage cut in 1870 & '71 have been applied by defendant?

64 Ans. It should have been applied, one-half on my part of the purchase money of said lands & the other half to defendant, and the amount of my half to be endorsed on the contract.

Ques. In 1871 what arrangements did you make toward paying the defendant the amount you owed him outside of your land transactions?

Ans. I made negotiations that season with other parties for what money I supposed I wanted to pay up Mr. Hardwick all my private indebtedness, together with my half interest in the lands.

Ques. From whom did you get the money and through whom was it negotiated for the purpose of making these payments?

Ans. I got it from John Ward, Detroit, who was acting as agent *from* Henry Barnard.

Ques. How much did you get through said Ward for purposes above stated and at what time?

Ans. I got six thousand dollars in the month of September, 1871. I think about the 8th.

Ques. At this time did you see defendant?

Ans. About this time I saw him in Detroit.

Ques. Where?

Ans. At the Michigan Exchange.

Ques. Give your transactions and talk at that time.

Ans. I went to Detroit for the purpose of settling up with Mr. Hardwick and paying him up in full, but in conversation with him he stated to me that he had two notes of one thousand dollars each that he had given me no credit for, and wished me to take them. Also, he had figured up about seven hundred dollars more due him than his previous statement showed. I declined taking the notes, and told him that he had better give me credit for the notes, as they were secured

65 well; that he could wait better than I could, and that I had made negotiation with Mr. Ward to get money enough to pay him all I owed him, but if I had to take those notes and pay him up in full it would make me short. I told him I had come prepared to pay him up all of our private matters, and at that time I asked him for an extension of time for another year for the payment of the balance due on my half interest in the lands mentioned in Exhibit B. He made the reply that if I would pay up all our private matters that he would not have any

trouble about the extension. I told him, if he said so I would pay it, the amount being small, but that I rather he would extend it.

Ques. What amount do you refer to as being small?

Ans. The amount due on my half of the lands mentioned in Exhibit B.

Ques. Did he state what he claimed was due on your half of the lands mentioned in Exhibit B at this time, and, if so, what amount?

Ans. He did, and it was about fifteen hundred dollars, I think.

Ques. Did the defendant at this time say anything about your borrowing money through Ward, and if so, state what he said?

Ans. He said he was surprised to learn that I was borrowing money of others to pay him; he said he would have been glad to have loaned me the money himself and taken the security I had given Ward.

Ques. How much was paid to defendant at this time?

Ans. I do not recollect exactly now, but I arranged with Mr. Ward to pay him the full amount that I supposed I owed him.

66 Ques. What two notes of one thousand dollars each do you refer to in your conversation had with defendant at Detroit, as above stated.

Ans. In the spring of 1869 I had a large lot of logs for sale, and I had not been offered what I thought they were worth; I went to Mr. Hardwick and made a proposition to him as follows: I told him I had been offered about eight and one-half dollars per thousand feet, but I don't recollect definitely the exact amount now, and I told him he might have one-half interest in the logs at that price, if he would advance to me what money I wanted to pay up my bills, which was not a large amount; I told him I thought the logs was worth about fifty cents or one dollar more per thousand than I had been offered, and if he would take hold and help sell them, we would divide equally all above the price that I had been offered. He accepted the proposition, and in a few days we sold the logs to Michael Noxon for nine dollars per thousand feet, I think; at any rate it was enough to make Hardwick's share of the profits about five hundred dollars, it being one-half of the amount of the excess of the price as sold to Noxon above the price I had previously been offered. Noxon paid partly down, I think about two thousand dollars, and the balance in monthly payments, all to be paid within four months, I think, for which notes were given to defendant, and he took the notes, and received the payments on them all except three thousand dollars, and Noxon asked of Hardwick an extension of time for the balance, and he, as a favor, having other deal with these

67 parties, he extended the time without consulting me. Then the amount run along unpaid for some time until Kennady, the endorser of this note, failed. Then Hardwick saw Mr. Noxon about the note, and Mr. Noxon told him that he considered it a debt of honor, as he had favored him a considerable in waiting on him for the note, and would give him new notes for one thousand dollars each, and the interest at that time was all paid up, I think, which amounted to about eight hundred dollars. These notes were to be paid in three, six, and nine months, endorsed by a party named Bonisteel, I think, whose first name I don't remember, who was satisfactory to defendant. The first of these notes for one thousand dollars was paid to Hardwick and the other two notes were the ones that Hardwick wished me to take, that I refused to before, which he claimed had not been paid and were past due at that time.

The further taking of testimony is hereby adjourned to 2 o'clock p. m.

Two o'clock p. m., the testimony of Arthur R. Richardson is again resumed.

Ques. From whom did you learn the three thousand dollars had not been paid when due in 1869 and that an extension of time had been given?

Ans. From defendant, Hardwick.

Ques. When did you learn of the second extension above mentioned had been given, and the three one-thousand-dollar notes were taken, and from whom did you learn it?

Ans. From defendant, Hardwick; the time I don't remember, but I think it was in May or June, 1871.

Ques. State whether or not you were consulted in any of these
68 extensions of these three thousand-dollar notes, or knew anything of these extensions until informed by defendant some time after they were made.

Ans. I was not consulted and did not know.

Ques. From whom did you receive the information in regard to the extension of the payment of the three thousand dollars, and the taking of the three notes, two of which Hardwick desired you to take, as you stated this forenoon?

Ans. From defendant, Hardwick.

Ques. What consent, if any, did you ever give to the taking of new notes and the extension of time for the payment of the Noxon indebtedness above stated?

Ans. Not any.

Ques. Of this transaction, who had the control and handling of it?

Ans. Defendant, Hardwick, had the entire control.

Ques. What books of account, if any, did you keep with the defendant, Hardwick?

Ans. I did not keep any regular book of account with defendant, as our business was in such shape and he being away and paying out money for me at different times and place, upon my order, the amounts of which I did not know until I got this from him. I thought it would be impossible for me to keep a correct account of our transactions and that I had full confidence in Mr. Hardwick in keeping everything straight.

Ques. Was there any books of account kept of your transactions with defendant and by whom?

Ans. There was, by defendant.

Ques. Did you receive at any time from defendant any statements of your transactions and dealings with him; if so, when?

69 Ans. I did; two or three, I think, at various times; I can't recollect the date.

Ques. At the time you saw defendant in Detroit, in 1871, as above stated, did you have a settlement with him, so as to ascertain how you stood?

Ans. We had a partial settlement; I think he figured up, in the Michigan Exchange, about how we stood, from a memorandum taken from his books.

Ques. Had you before that time, the year 1871, had any examination of your account with defendant, so as to ascertain how you stood?

Ans. I think I had, some time in the spring or summer of 1871, at Alpena; defendant and I looked over the accounts between us, and found them to be satisfactory to me, and I think he gave me a statement at that time of our standing, but I am not sure.

Ques. At that time, at Alpena, did the defendant have you credited

with any sums paid upon your purchase-price for lands mentioned in Exhibit B? If so, state how much, if you can.

Ans. There was a credit of moneys that he had received for stumpage, but don't recollect the amount definitely, but the balance due on my part was about fifteen hundred dollars.

Ques. State, so far as you know, of the sale of all stumpage from lands described in Exhibit B, made prior to September, 1871, by yourself or Hardwick.

Ans. I cut myself in the spring of 1868 and winter of 1868 & '9, as before stated, and George Richardson & Co. in the winter 1870 & '71, and that is all that was cut up to that time, as far as I know.

Ques. In September, 1871, what was the value of the lands described in Exhibit B?

Ans. I should consider them worth to me from forty to forty-five thousand dollars.

70 Ques. What would be the market value at that time of said lands?

Ans. I should think the market value at that time would be about thirty-five thousand dollars.

Ques. Did you know the value of pine lands at this time on Thunder Bay River and its tributaries?

Ans. I did; I was engaged in lumbering business, and in looking pine lands for myself and for others that were buying and selling.

Ques. What disposition has been made of these lands by defendant since September, 1871?

Ans. Frank D. Spratt bought eighty acres, being the south half of southwest of section sixteen, in town. thirty north, of range three east; and Augustus N. Spratt bought the Carter lands described as the west half of the northwest quarter and the southeast quarter of the northwest quarter of section twenty-five in town. twenty-nine north, of range four east; also a part of the Eaton lands, being the east half of the southwest quarter and the west half of the southeast quarter of section twenty-six, in town. thirty-one north, of range six east, and the balance of the Eaton lands were sold to Luce & Company, but whether it was T. Luce & Co. or Mason, Luce & Company at that time, I cannot say. The sale was made to Luce & Co., I think, in the summer 1871, and before I saw defendant in Detroit, in September of that year; but I am not sure but this sale to Luce & Co. may have been made the next year. There is yet 160 acres unsold, as far as I know, described as follows, viz: The east half of the northeast and the east half of the southeast quarter of section sixteen, in town. twenty-eight north, range three east; and that is a description of all the lands mentioned in Exhibit B.

71 Ques. What is the value of the 160 acres in town. 28 north, of range 3 east, remaining unsold?

Ans. Ten dollars per acre, at least.

Ques. Did the defendant ever state to you the amount he was to receive from Luce & Co. for the lands sold them; and, if so, what sum?

Ans. He did; I think he said it was twenty-two thousand dollars.

Ques. Does the memorandum or agreement, marked Exhibit B, dated October 1st, 1868, contain the entire agreement between defendant and yourself in relation to the land therein described?

Ans. It does not.

Ques. For what purpose was the said memorandum or contract made?

Ans. Made simply to show, in case any accident to either of us, that I had a one-half interest in the lands mentioned therein.

Ques. What part of the agreement between yourself and defendant in relation to said lands is not contained in said exhibit, if any?

Ans. The part concerning the application of the proceeds arising from the sale of timber from said lands or from the sale of lands themselves upon the purchase price, as I have before stated; also in regard to the management of the lands jointly.

The further taking of testimony is hereby adjourned until to-morrow, at 9 o'clock a. m.

FEBRUARY 1ST, 1877—at 9 o'clock a. m.

The testimony of Arthur R. Richardson resumed.

Ques. Why did you not settle up fully with defendant when you saw him in Detroit in September, 1871?

72 Ans. I was ready to do so at that time, and my intention was to settle up all matters satisfactorily before he left the city, as I understood it, but the next morning I learned from Mr. Ward that he poked in his head at the door, as he termed it, and spoke to him, and Mr. Ward said he was busy just at that minute, and he went away, and he saw no more of him, and I did not see him again that season, and I learned that he left the city that day.

Ques. When you saw defendant at the Michigan Exchange, and had the conversation given above, what understanding, if any, was there between defendant and yourself of any further meeting, and when was it to take place?

Ans. There was to be another meeting at Mr. Ward's office the next morning, and I went there the next morning for that purpose.

Ques. What was the purpose of that meeting at Ward's office the next morning between you and defendant?

Ans. It was for the purpose of settling up and putting our business in proper shape for the next year, and paying him in full, if he insisted on it.

Ques. How did you come to meet the defendant at this time at Detroit?

Ans. Previous to this we had agreed to meet there at this time, and I went to Detroit for that purpose.

Ques. When was the next time you saw the defendant after you saw him at the Michigan Exchange, as above stated?

Ans. It was some time during the next summer I saw him at Alpena.

Ques. Did you, at that time, have any conversation with him about your matters?

Ans. I think I had some, but not much, for he appeared to

73 avoid all conversation in relation to our business.

Ques. When was the first time that defendant claimed that you had forfeited all rights to an interest in the lands mentioned in Exhibit B?

Ans. I saw him here in Alpena in May or June, 1874, he then said that I had no rights in anything with him in company in any way, and that I never had.

Ques. What reply did you make to defendant at that time?

Ans. I told him that I had in log matters years before, and in lands, which his own signature would prove.

Ques. What reply did he make, and what further was said and done at that time?

Ans. He said that he did not recognize me as a partner in an interest in those lands or anything else, and that I had forfeited all that I ever had; he said he had sold the lands, but had not got the pay for them, but when he did he would make me a present, or be liberal with me, or something to that effect, and by his manner and appearance I had no more confidence in him, and made no particular reply, and just I was leaving him he handed me some papers—a small package, and said those belonged to me, and I left him.

Ques. Where did you go from there?

Ans. I went to the office of George Fletcher.

Ques. When did you first examine the papers so as to learn their contents?

Ans. I think I examined them first in Mr. Fletcher's office in a few minutes after.

Ques. What did you find they contained?

Ans. I found the two one-thousand-dollar notes that I spoke of yesterday, besides some other papers, but I do not remember what they were.

74 Ques. Up to the time the defendant handed you these papers, as above stated, in whose possession and under whose control had said Noxon notes been?

Ans. They had been in defendant Hardwick's, possession and under his control.

Ques. Did you or not at any time consent or agree to take said Noxon notes from defendant?

Ans. I did not; but he frequently asked me to, but I always declined so to do.

Ques. What did you do after this in regard to your transactions with defendant?

Ans. I saw Mr. George N. Fletcher and asked advice of him what to do in regard to my matters with defendant. I then thought he, defendant, meant to beat me out of every dollar I had in the lands I owned in company with him. Mr. Fletcher being an old friend of mine, I put confidence in him and in his advice. After consulting Mr. Fletcher, I concluded to institute a suit against defendant, and I went to Mr. Burnham, an attorney at Alpena, and had papers made out instituting a suit against defendant in the circuit court for Alpena County, and the papers were delivered to the sheriff to be served, but before the papers could be served Mr. Hardwick left town.

Ques. When you heard that the papers had not been served on defendant by the sheriff, what did you do next in regard to the matter?

Ans. Mr. Fletcher having gone to Detroit I telegraphed to him the same day that defendant left Alpena to get out papers to institute a suit against defendant on his arrival at Detroit.

Ques. Who, if any one, is interested with you in this suit against defendant?

Ans. No one has any interest in this suit with me whatever.

75 ARTHUR R. RICHARDSON.

Subscribed and sworn to before me this first day of February, 1877.

JOHN H. STEVENS,
Notary Public.

ALPENA, *January 26th*, 1877.

The deposition of Frank D. Spratt, a witness, produced, sworn, and examined by and before me John H. Stevens, a notary public in and for the county of Alpena, on the twenty-sixth day of January, A. D. 1877, on behalf of the complainant in the above-entitled cause, pursuant to notice hereto attached.

FRANK D. SPRATT says, I reside in Alpena, and have resided here for about nine years, and my age is 45 years; occupation, lumbering.

Ques. Do you know the parties to this suit?

Ans. I do.

Ques. How long have you known them?

Ans. About as long as I have been here.

Ques. What business were you engaged in in the years 1870 & 1871?

Ans. I was lumbering.

Ques. Did you buy any stumpage of defendant, Hardwick, in either of those years?

Ans. I did buy stumpage that I cut in the winter of 1870 & 1871.

Ques. Where did you make the contract?

Ans. I made it through correspondence with Mr. Hardwick, the defendant, who was in Massachusetts, and there was no other contract than the correspondence between us.

76 Ques. About what time was this in the season?

Ans. I think the correspondence was commenced in December, and it may have run into January before it was closed.

Ques. What were the descriptions of land from which you bought the stumpage?

Ans. It was the south half of southwest quarter of section sixteen, in town. thirty north, of range three east.

Ques. When were you to pay for this stumpage?

Ans. I think it was the first of June, 1871.

Ques. How much were you to pay at that time?

Ans. I don't recollect the price per thousand, but the whole amount was one thousand dollars on the first of June, 1871.

Ques. Did you pay him that sum as of that date?

Ans. I did.

Ques. Did you take any other timber off of those same lands?

Ans. I did the following year.

Ques. How much did you pay for that, and when did you pay it?

Ans. I paid the same rate that I paid the year before per thousand.

Ques. About how much did it amount to?

Ans. As near as I can remember, it amounted to about thirty-five to fifty dollars.

Ques. Does that include all the stumpage or timber you bought?

Ans. No, sir. There was a balance of timber left on the land uncut which I bought at the time I settled for the last cut above mentioned, for which I paid him one hundred dollars some time during the summer of 1872, the exact date I do not remember.

Ques. Does that include all the amounts paid him, defendant, for stumpage?

Ans. That does include all the principal; there may have
77 been some interest paid besides.

Ques. You did not purchase the land?

Ans. No, sir.

Ques. What was the value of the land after the timber was taken off?

Ans. No particular value. It was valuable only for the pine.

Ques. In this correspondence which you had with the defendant, in relation to the purchase of said timber, did he refer to any one else as having an interest in said lands or timber?

Ans. My recollection is that he did.

Ques. To whom did he refer as having an interest?

Ans. I think he referred me to Mr. A. R. Richardson.

Ques. Have you the defendant's letters that you received in relation to this timber?

Ans. I don't know whether I have or not.

Ques. Will you examine your papers and see if you have them?

Ans. I will.

Ques. What office did you hold in this county in the year 1874?

Ans. Office of sheriff of said county.

Ques. Did the complainant in this case deliver any papers to you as sheriff to be served on the defendant?

Ans. He did.

Ques. State the time.

Ans. I think it was in May or June, in 1874.

Ques. What were the papers?

Ans. Declaration in a suit commenced in the circuit court for the county of Alpena, in which A. R. Richardson was complainant and B. C. Hardwick defendant.

Ques. Did you get service on the defendant?

Ans. I did not.

Ques. Why did you not serve them?

78 Ans. The papers were put in my hands in the evening quite late, and before I found Mr. Hardwick he left Alpena on the 7 o'clock boat the next morning.

The further taking of the testimony of Mr. F. D. Spratt is postponed for the purpose of giving him a chance to examine his papers.

JANUARY 27TH.

The testimony of F. D. Spratt is resumed.

Ques. Have you made an examination of your correspondence with Mr. Hardwick?

Ans. I have looked and searched diligently for the letters I received from Mr. Hardwick in relation to this matter, and I cannot find any of them, & I think they must be destroyed.

Ques. From your recollection of that correspondence are you able now to state whether or not Hardwick referred you to Richardson, the complainant, as having an interest in those lands?

Ans. I was informed that Richardson had an interest in those lands at the time I had this correspondence about those lands with the defendant and before the negotiation was concluded, and am quite certain that Mr. Hardwick wrote me to that effect.

Ques. Did anybody advise you or suggest that you see Richardson before you concluded this trade with defendant?

Ans. No one, unless Mr. Hardwick did.

Ques. Did you see the complainant in regard to this purchase before you purchased of Hardwick?

Ans. I did not.

Ques. Why did you not see complainant?

Ans. I thought I could negotiate on better terms with Hardwick than I could with him, and I did not want him to know anything
79 about it for that reason.

Q. Can you state now, after examination of your papers in relation to this transaction, how much you paid defendant for this timber, and when?

Ans. I paid him August 16th, 1871, five hundred and eight dollars and sixty-eight cents. In Sept. following I paid him five hundred and thirteen dollars & eighty-five cents, and the $8.68 and the $13.85 was for interest. And in the year following (1872), on October 5th, I paid him one hundred and fifty dollars.

F. D. SPRATT.

Subscribed and sworn to before me this 27th day of January, 1877.

JOHN H. STEVENS,
Notary Public.

The deposition of George Richardson, a witness produced and sworn and examined by and before me, John H. Stevens, a notary public in and for the county of Alpena, on the twenty-sixth day of January, A. D. 1877, on behalf of the complainant in the above-entitled cause pursuant to notice hereby attached.

GEORGE RICHARDSON says: I reside in Alpena, and have resided here for about eleven years. I am fifty-eight years of age, and I am a lumberman by occupation.

Ques. What relation are you to the complainant?

Ans. Brother.

Ques. Do you know the defendant?

Ans. I do.

Ques. How long have you known him?

Ans. For about eight or nine years.

Ques. What business were you engaged in in the year 1870?

Ans. Lumbering.

80 Ques. Was there any one engaged with you?

Ans. There was; A. P. McMasters and Benjamin F. Starbon, under the firm name of Richardson & Co., I think.

Ques. Did said firm purchase any timber of defendant, Hardwick?

Ans. They did.

Ques. In what year?

Ans. In the fall of the year 1870.

Ques. Can you give the description of the lands?

Ans. I can't give the particular description, but it is what was known as the Eaton tract, in town. thirty-one north, of range six east.

Ques. How much timber did you cut from said lands?

Ans. I can't say positively, but it was between nineteen hundred thousand or two million of feet.

Ques. Did you have a written contract?

An. We did.

Ques. Can you state the amount you paid Hardwick for this timber?

Ans. I cannot now.

Ques. Where are your contract and papers relating to this timber?

Ans. When we settled up with the defendant McMasters took the papers and contract referring to said transaction, and I presume he now has them in the State of Maine.

Ques. Did you pay the amount agreed upon under the contract for said timber to the defendant?

Ans. We did.

Ques. When was it paid?

Ans. It was to be paid in June, 1871, and if it was not paid at that time we paid 10 per cent. interest up to the time it was paid; but it was paid some time during that season.

Ques. Can you get the contract & papers so as to give the
81 amount of stumpage, the price paid, and the amount paid?

Ans. I think I can, and I will try to do so.

GEORGE RICHARDSON.

Subscribed and sworn to before me, this 26th day of January, 1877.

JOHN H. SEVENS,
Notary Public for Alpena County.

The further taking of testimony is hereby adjourned until to-morrow at 9 o'clock, a. m.

The circuit court of the United States for the eastern district of Michigan. In chancery.

ARTHUR R. RICHARDSON }
vs.
BENJAMIN C. HARDWICK. }

ALPENA COUNTY, *ss:*

In pursuance and by virtue of a notice, which together with an affidavit that the same was duly served on the solicitor for the defendant in the above-entitled cause, is hereto attached and made a part of this report, I, John H. Stevens, a notary public in and for the county of Alpena, duly commissioned, and the person named in said notice, do hereby certify and report, that on the 23rd day of January, 1877, at 10 o'clock in the forenoon, at Alpena City, in the county of Alpena & State of Michigan, Judson D. Holmes, appearing as counsel on the part of the complainant, and after waiting one hour and no person appearing for the defendant, Augustus N. Spratt, a witness named in said notice
82 was produced and after being duly sworn by me, was examined as a witness in said cause, and the taking of testimony in the above-entitled cause was continued from day to day (Sunday excepted) until February 1st, 1877, and during that time said Augustus N. Spratt, Daniel Carter, Arthur R. Richardson, Frank D. Spratt, and George Richardson, persons named in said notice were produced, and, after being duly sworn by me, were examined as witnesses on the part of the complainant in said cause. Their testimony was reduced to writing by me and subscribed by said witnesses in my presence, and said testimony as taken by me is hereto annexed, also is hereto attached Exhibit A and B, which are also made a part of this report. All of which is hereto submitted.

JOHN H. STEVENS,
Notary Public in & for Alpena Co., Mich.

(Indorsed:) Rec'd from P. O., Feb'y 13, & opened in open court, & filed Feb'y 21, 1879. A. Mandell, clerk.

83, 84 *Stipulation.*

Circuit court of the United States, eastern district of Michigan. In equity.

ARTHUR R. RICHARDSON }
vs.
BENJ. C. HARDWICK. }

It is hereby stipulated by and between the parties hereto, by their respective solicitors, that the papers, letters, documents, &c., on file in the chancery case of Hardwick vs. Richardson, No. 1880, of this court, may be considered as introduced in evidence in this cause, and may be used as such by either of the parties hereto, & withdrawn from the file.

D. C. HOLBROOK,
Solicitor for Complainant.
ALFRED RUSSELL,
Solicitor for Defendant.

(Endorsed:) Filed July 19, 1877. A. Mandell, clk.

85 *Testimony of B. C. Hardwick.*

In the circuit court of the United States for the eastern district of Michigan. In equity.

ARTHUR R. RICHARDSON }
vs.
BENJAMIN C. HARDWICK. }

Testimony taken before Charles Flowers, a United States commissioner.

BENJAMIN C. HARDWICK, defendant, was produced and sworn on his own behalf, and in answer to interrogatories testified as follows:

Ques. Where do you live?

A. Quincy, Mass.

Ques. Where did you reside in the fall of 1859?

A. I took up my residence in Alpena, Michigan, and remained there as a resident until early in 1868; from there I went to Quincy, Massachusetts.

Ques. Have you had business relations in Alpena since 1859 continuously?

A. I have. I have visited there every year.

Ques. Do you know Daniel Carter?

Ans. I do.

Ques. Did you buy any land of him in 1867?

Ans. I bought some land of him in May, 1867.

Ques. Are you able to give the description?

Ans. I can by referring to papers.

(Witness examines memoranda of descriptions.)

Ans. The west half of the northwest quarter and the southeast quarter of the northwest quarter of sec. 25, T. 29, R. 4 E., Mich.

86 Ques. Will you state whether you made any arrangement with Arthur R. Richardson, complainant in this case, with reference to that land?

A. I purchased the land and agreed with him that he might become equally interested.

Ques. Was that a written agreement?

Ans. It was subsequently reduced to writing.

Ques. Then you made a verbal agreement with him that he might become interested in it on what conditions?

Ans. By paying one-half of the purchase-money with expenses and ten per cent. interest.

Ques. Originally who did you buy that for?

Ans. I bought it for myself, having that arrangement in view at the time I made it, of allowing him to come in.

Ques. Was there any deed made when you purchased it?

Ans. There was.

Ques. Who did the deed run to?

Ans. To me.

Ques. Did you purchase any other lands in the same year?

Ans. In June I purchased some.

Ques. What was the land?

Ans. The east half of the N. E. quarter and the E. half of the S. E. quarter, sec. 16, T. 28, R. 3 E.,-and the S. half of the S. W. quarter of sec. 16, T. 30, R. 3 E.

Ques. Whom did you buy that of?

Ans. Of the State.

Ques. State what arrangement was made with reference to Richardson?

Ans. It was bought under the same arrangement that the preceeding purchase was made.

Ques. In November of the same year did you agree to purchase any other land of Mr. Theodore H. Eaton?

Ans. I did.

Ques. What arrangement, if any?

Ans. He was to have the privilege of becoming equally inter-
87 ested the same as in the preceeding ones, but the purchase-price was to be reckoned at $10.00 an acre.

Ques. Did you make any payments upon that?

Ans. I paid the whole of it.

Ques. Did he make any payment?

Ans. He did not.

Ques. In January, 1868, did you have occasion to see Mr. Eaton with reference to that land?

Ans. That was the time I made the formal purchase in Nov. 1867; I agreed upon the purchase, made preliminary arrangement, an agreement to purchase with another party, who represented that he controlled the land.

Ques. Who was that party?

Ans. One Slawson.

Ques. When the time came for the completion of this purchase in Jan., 1868, did you see Mr. Theodore H. Eaton?

Ans. I did.

Ques. State what occurred with reference to it. Did Slawson comply with his offer?

Ans. Eaton said that Slawson had not complied with conditions & he declined to recognize him, but said he would make the trade with me.

Ques. What did you do, if anything?

Ans. He said he would go on and carry it out or trade with me on

the same terms, if I would take a deed dated back to November 14th, and pay interest from that date, and pay the taxes for the preceeding year, 1867.

Ques. Did you do that?

Ans. I did.

Ques. Did you complete the purchase?

Ans. I did.

Ques. Will you give the description of the land?

Ans. The NW. quarter of the NW. quarter of sec. 1; the NE. quarter and the E. half of the NW. quarter, and the NE. quarter of
88 the SE. quarter of sec. 2, T. 30, R. 6 E.; also the E. half of the SW. quarter and the W. half of the SE. quarter of sec. 26; E. half of the SE. quarter and the SE. quarter of the NE. quarter of sec. 34, and the W. half of the SW. quarter of the NE. quarter of sec. 35, T. 31, R. 6 E.

Ques. Who were those lands purchased for?

Ans. Myself.

Ques. Who paid for them?

Ans. I paid for them.

Ques. Did Richardson have anything to do with the purchase?

Ans. He had nothing to do with it, but I purchased them with the understanding that he could become interested the same as in the preceeding lands, except as to the purchase-price.

Ques. Who paid for these lands?

Ans. I paid for them.

Ques. For whom were they purchased?

Ans. They were purchased for myself, but at the same time I had an arrangement with Richardson that he might become interested subsequently, the same as in the prior purchases.

Ques. In what shape was that understanding?

Ans. A verbal agreement.

Ques. And in reference to that understanding there was no written agreement?

Ans. It was subsequently reduced to writing, the agreement subsequently embraced this. At this time it was expected that in a very short time he would come in, come in and be interested.

Ques. State whether at that time, during the year 1867, the complainant A. R. Richardson was indebted to you on bond and mortgage, and how much at the close of the year 1867.

Ans. Over $8,000.

Ques. Was he carrying on lumbering operations at that time?
89 Ans. He was.

Ques. What representations did he make in regard to his lumbering operations?

Ans. In November, 1867, he made an additional loan of me of between five and six thousand dollars, and he said that would pay all his bills, so that in the spring he would realize large amounts, and he would be able to pay off everything in the spring of 1868.

Ques. What arrangement did he desire to make with you in the fall of 1868, with regard to cutting from the Eaton lands during the next season?

Ans. He wished to be allowed to cut the pine from the land I had purchased of Eaton.

Ques. At that time had he become interested in the land?

Ans. He had not.

Ques. Had he made any payment?

Ans. He had not.

Ques. Had he decreased the mortgage debt?

Ans. Not materially; it was nearly $8,000 in the fall of 1868.

Ques. When he asked you for the privilege of cutting pine from the Eaton land, what did you say to him, if anything, with regard to fixing a limit to the time in which he might become interested in the land?

Ans. I told him I wished to have a limit agreed upon.

Ques. Did he make any objection to agreeing upon a limit?

Ans. He did not.

Ques. Did you ask him how much time he wanted thereafter?

Ans. I did.

Ques. What did he say?

Ans. He asked me to give him two years' time. He said he would not need so much; but it was well enough to have enough time.

90 Ques. Fix the date, as near as you can, of the time when he said this.

Ans. About October 1st, 1868.

Ques. What did you agree about that?

Ans. I was surprised at his asking that length of time, because, originally, I had supposed that he would pay before the time when he asked me to make this limit; but finally, I agreed to give him the limit he asked for, two years from that date, October, 1868.

Ques. Was that done in writing?

Ans. It was; there is a copy attached to the bill. I have seen a copy of it. I suppose there is no controversy about that.

Mr. HOLBROOK. No.

Ques. State whether he examined the writing of October 1st, 1868.

Ans. He did.

Ques. State whether there was any hesitation in his accepting it?

Ans. It seemed to be perfectly satisfactory. There was no objection made. He remarked at that time, I remember, "If I don't take it at that time, I lose it;" a remark of that nature.

Ques. Then what agreement was made after that in regard to cutting timber; and how much per acre?

Ans. At this time there was no good market for Norway pine, and this was mixed pine, Norway and white pine, and he wished to cut the white pine, leaving the Norway standing. I told him I was reluctant have him do so, as it would injure the land very much; but he said he would cut enough off of every acre; and upon his agreeing to cut on these lands 12,000 to the acre, I consented, and made a contract to that effect.

Ques. In writing?

Ans. It was written on the back of the memorandum of the original agreement.

91 Ques. And a copy of that is attached to the bill (shows a paper to witness)?

Ans. That is it, I suppose; it was on the same piece of paper, on the back of the same piece of paper.

Ques. Was that agreement made at the same time that the agreement of the limitation of two years?

Ans. At the same time.

Ques. And at the same place?

Ans. At the same place.

Ques. Where were you?

Ans. It was in the post-office; it was where I had formerly kept a stock of goods.

Ques. Was there any understanding that half of the stumpage was to apply as a payment for his interest in the lands?

Ans. There was not.

Ques. Was that subject ever talked about?

Ans. It was stated to him then that all the receipts from stumpage would be applied to reduce my investment in the land, and that if he took an interest he would have the less to pay to become interested. I remember that was explained to him explicitly.

Ques. What was the rate fixed for the stumpage, high or low?

Ans. It was very low, and the land was damaged to the amount I received from stumpage over and above what I received from the land.

Ques. Would you have made that contract with anybody else?

Ans. I would not.

Ques. So low, I mean.

Ans. I would not.

Ques. During the two years following October, 1868, was there any change or supplemental arrangement of any kind with reference to the limit?

Ans. There was not; the agreement was not changed in any respect during that time.

Ques. Did you keep an account with your lands?

92 Ans. I did. I began an account in the spring of 1867, when I made the first purchase under that arrangement.

Ques. Did you keep an account with the Eaton lands?

Ans. I kept it in the same account—land account number one I termed it. I entered all lands in which Richardson had the privilege of becoming interested in that agreement in that account, charging all that I paid out and crediting all that I received from the sale of stumpage or from the sale of lands.

Ques. On the first of Oct., 1870, the expiration of the time of the limit, how much did he owe you on bond and mortgage?

Ans. May I look at my memorandum?

Ques. Yes.

Ans. I think about $8,000 (refers to memorandum)—over $8,000; Oct. 1st, 1870, he still owed me over $8,000 on mortgage and notes.

Ques. In the previous year had he made any payment for an interest in the lands?

Ans. He had not.

Ques. Had he made you any payment on the mortgage debt?

Ans. Yes, sir. I think there had been some payments made, but the interest offset that. It remained about stationary. It was then over $8,000, and I find it was the same the year before.

Ques. On October 14th, 1870, how did your account stand with the Eatons lands after charging interest upon all outlays and crediting interest on all amounts received.

Ans. It stood over $10,000 against the land, not including anything for my own services or traveling expenses on account of the land.

Ques. Traveling where?

Ans. Traveling from the East—Quincy, Mass.

Ques. Did you see the complainant, A. R. Richardson, about

93 the 1st of October, 1870, at the expiration of the limit of time that his right under the agreement expired?

Ans. I did.

Q. What did he say?

A. I had, during the year previous to this, been trying to cut down his indebtedness to me, and had been obliged to take some proceedings

in the foreclosure of a chattel-mortgage on some logs to secure a part of the claim, and at this time I spoke to him about what he was owing me, and proposed to give him another year to become interested, provided he would pay me what he was owing me on the mortgage notes. I told him if he would pay me up on that during the year, and pay for an interest in the land, he might still have the opportunity.

Q. What did he say in reply?

A. He asked me if I would put that in writing.

Q. What did you say?

A. I told him no; I would not give any writing about it; but I would do as I said provided he complied with the conditions.

Q. Did he do anything during the next year?

A. That would be during 1871.

Q. From October first, 1870, to October first, 1871?

Ans. Yes, sir; he made some payments. He was owing me about $7,000 Oct. 1st, 1871.

Ques. Those payments were on the mortgage debt.

A. On the mortgage debt; I never made any charge to him on account of the land; never considered him interested in it at all; never made any statement to him showing his indebtedness on account of land.

Ques. Between October, 1870, and May, 1871, were you in Alpena? (Witness refers to memorandum.)

A. I left Alpena Oct. 17th, 1870, and was not there again until May 10th, 1871.

94 Ques. When you arrived there in May, what was he doing?

A. He was making preparations to build a large brick house. Shall I state a further circumstance connected with it?

Q. Yes, sir.

Ans. It was on a lot mortgaged to me. There had been a wooden house on it, and when I got there the house was in the street, being moved away some distance—away down the bay shore—and I remonstrated with him about moving the house after it was mortgaged to me, and he said it did not occur to him until after he got it started, but it would make no difference, as he was going to build upon the same lot.

Ques. How long did you remain there?

Ans. I left there June 5th, 1871.

Ques. Did you desire him to make you payments?

Ans. I did; I then at that time pressed him to pay me what he was owing me. I reminded him that it was ill-advised for him to build that house, and told him it would be better for him to pay what he was owing me, and take an interest in the land. I reminded him that his option expired the following fall.

Ques. You referred to the verbal option you gave him in Oct., 1870?

Ans. Yes.

Ques. You reminded him that the verbal option expired in Oct., 1871?

Ans. Yes, sir; I left there June 5th.

Ques. Before Oct., 1871, did he pay anything on account of the Eaton lands?

A. No, sir. On account of lands?

Ques. Yes.

Ans. No, sir; he did not.

Ques. Did he give you anything upon the mortgage debt?

Ans. Yes, sir; I think he paid me a draft of a thousand dollars. I took away a draft of a thousand dollars when I left in June, 1871,

95 and then I collected in N. Y. from Knoxon about $800 in interest that I applied on his note endorsed.

Ques. On the 1st of October, 1871, how much did he owe you on mortgage and notes?

Ans. Between five and six thousand dollars.

Ques. At that date had he paid you anything on account of the Eaton lands?

Ans. He had not; he never offered to do so.

Ques. During the month of October, 1871, did Richardson, the complainant, make any further proposition to you about taking an interest in the land?

Ans. He did; he came to me between October 9th and October 19th; I name those dates because I arrived in Alpena Oct. 9th and left October 19th; he came to me while I was there, between those dates, and asked me to give him a further opportunity of becoming interested.

Ques. Did he offer you any payment?

Ans. He did not.

Ques. What did you say to him?

Ans. I declined; told him I should not do it; refused to do it.

Ques. Have you looked at the deposition of Richardson in respect to an interview with you in Detroit in Sept., 1871?

Ans. I have.

Ques. Were you in Detroit, or near Detroit, during that month?

Ans. I was not in the State of Michigan during July, Aug., or Sept., 1871.

Ques. Did you have any such interview with him as he locates at that time and place?

Ans. I had no such interview at any time.

Ques. Anywhere?

Ans. Anywhere or at any time as he narrates; I saw him in the fall of 1871, the last of Oct., in Detroit; the 21st of Oct. I met him in Detroit.

96 Ques. What occurred then, if anything?

Ans. There was nothing special; I was only here a day or two; I was here at the time of the funeral of those parties who were burned at Peshtigo, funeral in the Congregational church. I was here only a day or two, and then went right East; there was no such interview then, as he claims.

Ques. Did he claim any right whatever in this land?

Ans. He did not. It occurs to me that he spoke to me at that time about his having borrowed money of Mr. Ward, and that he had given as security the same land that I held a mortgage on, and I think he said he wanted to see me about it, and asked me to call in and see Mr. Ward. I arrived in Detroit on the 21st Oct. and left on the 23rd. I called on Mr. Ward, but he was busy and I could not see him, and I was busy.

Ques. In November, 1871, on the 14th, how did your debit and credit account stand with this land?

Ans. About $7,000 against the land, not including any services or traveling expenses on account of the land.

Ques. Had much of the land been cut over then?

Ans. A large part of it had been cut over, and this was in Oct., '71, at the time the fires were raging, and I felt that my investment was very insecure, and, at the rate it had progressed, it looked as though the timber would all go and I should have no margins left in it, at that time.

Ques. After October 1st, 1871, when the verbal option given to Richardson the year before that had expired, had he or any other person anything to do with the lands but yourself?

Ans. He hadn't; no one had; I would like to state why I said about $7,000 against the land at the time, and I would further state
97 that there was no contract existing with anybody by which there was anything due me on account of the land or any contract for the sale of land, except there was a balance of about $150 of F. D. Spratt's contracts remaining, so that $7,000 was against the land without any prospect of revenue, unless it should be by future sales or contracts.

Ques. And afterwards, in Sept., 1872, did Richardson request any further or any other verbal option?

Ans. In Sept., 1872? No, sir. I don't know that he put it in that form, but he came to me and spoke as though he wanted an interest in it. I don't know that he put it in the form of wanting any particular time, but wished an interest in it.

Ques. Did he make any claim at that time that he had any interest?

Ans. He came to me in this way: I made contracts at that time in Alpena with parties for a large sale, and he was there at the time, and knew of my making that contract, and he came to me and wished to have an interest in it. He made no claim in the form of a claim that I remember, except expressing a wish to be interested in it. He did not claim that his claim had not expired.

Ques. How much did he then owe you on mortgage—about how much?

Ans. This was in the fall of 1872. About $6,000—five or six thousand dollars.

Ques. Did he, in any of his letters after October, 1871, make any pretension or allusion to having any interest in the land?

Ans. No, sir.

Ques. Have you looked at the testimony of A. N. Spratt taken in this case?

Ans. I have.

Ques. Did you give Spratt to understand after the agreement
98 expired in 1871—the verbal option—in any way that Richardson had any interest in the land?

Ans. I did not. After looking at the testimony, I wrote to Mr. Spratt, and he said he did not understand from anything I said that he had an interest in it; but he told Richardson that he would not do anything about it without his consent.

Ques. Have you read the testimony of Richardson in this case?

Ans. Yes, sir.

Ques Of A. R. Richardson?

Ans. Yes, sir.

Ques. Did he ever have any arrangement with you, as he testifies, by which he was to have money to buy the land of Eaton?

Ans. He never had any arrangement with me to buy land of him or anybody else. I had loaned him money, and he bought other land with it, but he gave me security for it. He never had any arrangement with me.

Ques. At the time you were in Detroit, at the time he refers to, had you any arrangement with him that you should buy the land for him?

Ans. I had not; and he never made any pretensions subsequently that there was any such understanding.

Ques. What was the date of your leaving Alpena for Detroit?
Witness refers to memorandum.
Ans. This was in 1868. I left Alpena January 13th, 1868.
Ques. Had you then arranged to buy the Eaton land yourself for you'self?
Ans. I had.
Ques. Did Slawson leave Alpena with you at that time?
Ans. He did not; he left in the November preceding, before navigation closed.
Ques. What was the date of your closing your trade with Eaton?
Ans. January 18th. I left the 13th, and went down the
99 shore by stage.
Ques. Did you ever at any time loan money to Richardson and take a deed of real estate in your own name from him as security?
Ans. I did not.
Ques. Did you ever have any such conversation with him as he locates in May, 1868?
Ans. I did not; nothing resembling it.
Ques. When you bought the land of Eaton, did you know that any one else was trying to get it?
Ans. I did not.
Ques. Did you see C. W. Richardson or H. R. Morse there?
Ans. I did not see them, and I am quite sure they were not there.
Ques. Where were they then, as you believe?
Ans. I am confident they were in Alpena. In a letter I wrote at this time from this city to this Mr. Richardson I asked him to tell his brother that I found nothing on deposit at the bank, as he requested me to answer; he was at Alpena at the time I made the purchase here in midwinter.
Ques. What have you to say in regard to Richardson's statement with regard to conversations and agreements had with you in the spring of 1868?
Ans. They are untrue: no semblance of truth in them.
Ques. In the spring of 1868, where were you, or were you in Alpena?
Ans. I went to Alpena in May, 1868.
Ques. And left when?
Ans. I went to Alpena May, 1868, and left June 1st, 1868, for Detroit; went back again in June, and left for good June 22ond, 1868.
Ques. When were you there again?
Ans. Sept. 4th, 1868.
Ques. Have you any knowledge of whether he cut any timber from the lands before you gave him permission to?
100 Ans. I don't know of my own knowledge; I had no intimation; never had any until I saw this testimony that has been put in.
Ques. You never gave him any authority before that or any written permit, did you?
Ans. I never did, and he never reported having cut any; and, furthermore, I don't think he did; the timber that he reports—400 and some odd acres—as having cut in 1868 I can show conclusively were not cut until 1869. In the spring of 1870 he rendered an account of this timber as having been cut the previous winter.
Ques. What entry do you find on your land account under 24th June, 1870?
Ans. A charge is made here on my books "A. R. Richardson, Dr. to

land account number one, stumpage from land bought of Eaton, 8438." This entry was made in June, 1870.

Ques. Did you make any charge against him for stumpage in 1868; did he pay you anything?

Ans. He did not, and I know of none being cut.

Ques. Were you there during the months of July, Aug., and Sept., 1871?

Ans. I was not.

Ques. Where were you during those months?

Ans. I was in Massachusetts and New York State during the whole of those months. Refers to memorandum.

Ques. Did you keep a diary in which you entered the dates of your movements?

Ans. I did at that time.

Ques. And you refresh your memory from that diary do you?

Ans. Yes; I was in Quincy, Mass., and that neighborhood, and Hadley, Mass., for about a fortnight. Then I went to New York State; left there the last of Sept. for Quincy, and left in Oct. for the West.

101 Ques. When did you see Richardson; what time in October?

Ans. I saw him at Alpena.

Ques. At what time?

Ans. Between the 9th, I think, and the 21st of Oct.

Ques. Did you have any such conversation with him as he locates previous to that time in Detroit, during that year?

Ans. The conversation as he narrates in his testimony?

Ques. Yes, sir.

Ans. No, sir; I did not.

Ques. Have you read his testimony about the Noxon contract?

Ans. I have.

Ques. What do you say about that?

Ans. It is untrue.

Ques. Will you state the facts?

Ans. In the spring of 1868 I went to Alpena; he came to me and said he had a large amount of logs that he wanted to sell, but that he could not do so to advantage then; he wanted some money from me to enable him to carry them longer, and he proposed to give me a chattel mortgage on those logs, and wanted me to advance him money, as he needed it, and for me to negotiate a sale when there should be a favorable opportunity, and he agreed to give me a commission for doing it; stated he would give me as much as five hundred dollars for doing it. I advanced him over $4,000 in cash, and then assisted him in making the sale to S. N. Noxon. I have a copy of the contract here if you wish it. The contract was between Richardson and Noxon. A part of the payments were made to Richardson direct; then he gave an order to Noxon, requesting him to make the after payments to me, and I took the notes from Noxon to apply on that contract when paid. Here is a copy of the receipt passed, if the party wants it.

102 (Witness produces two papers, and they are marked M A & M W, and are offered in evidence by Mr. Russell.)

Ques. Were those notes paid at maturity?

Ans. Some were and some were not.

Ques. Was there any extension?

A. The most of them were paid at maturity; but there was a balance that ran over, and while it was under my control it was not paid. I don't know whether it was paid subsequently or not.

Ques. Were all renewels reported to Richardson and approved by him?

Ans. They were.

Ques. And all extensions were with his knowledge and consent, were they?

Ans. No, sir; I would not say that, because some of them were made East and then reported to him. They could not have been made with his consent and knowledge then. Some were made here.

Ques. Did he ever object to them?

Ans. No, sir; he wrote to me to do what I thought best; I have his letters to that effect.

Ques. Did you ever have any dealings with Noxon on your own account?

Ans. I would write to him and ask him the position of things.

(The witness produces and reads a letter which is marked M G, dated Dec. 11th, 1873; also produces two other letters, marked Exhibit M R and M D.)

Ques. In one letter he told you to do the best you thought about it?

Ans. He did; reported sometimes verbally and sometimes in writing.

(The original contract is produced by witness and marked A B.)

Ques. Did you have any dealings with Noxon on your own account?

103 Ans. No, sir; he was not owing me anything during this period, and I was not owing him anything. The only business transactions I had with him was for Richardson.

Ques. Did Richardson ever refuse to take the renewal notes?

Ans. No, sir, he did not. When I gave them to him he examined them in my presence, and expressed a wish that I should continue to hold them, as I could do better with them than he could.

Ques. When were the renewal notes taken?

Ans. They were taken in September, 1871.

Ques. On what time were they?

Ans. Four, eight, and twelve months, I think.

Ques. Did you ever at any time credit Richardson with the sum paid on the purchase price of this land?

Ans. I never did.

Ques. Have you read his statement to that effect in his testimony?

Ans. I did; I so understood it.

Ques. Did you read what Richardson says about the application of the proceeds, and the management of the land jointly?

Ans. Yes, sir.

Ques. Is there any truth in it?

Ans. No, sir.

Ques. Was there any agreement whatever, except that contained in the written paper?

Ans. There was none, except that extension for a year, verbally.

Ques. Does the written agreement of October, 1868, with the limitation to October first, 1870, and the conversation about cutting the timber, constitute the whole agreement with reference to this land between you and Richardson, with the exception of the verbal extension from Oct. 1st, 1870, to 1871?

Ans. It does.

104 Ques. Did you ever have an appointment at John Ward's office, as Richardson states in his testimony?

Ans. No, sir; I think I have already mentioned that he said Ward wanted to see me, and that he asked me to go in and see Ward. I

remember I went to Ward's office, but he was busy and I was busy, but I did not have an interview with him.

Ques. Did you deliver the unpaid notes which you held to Richardson, and when?

Ans. I delivered them to him in 1874, June 9th.

Ques. Did you then give him a memorandum showing how much he owed you?

Ans. I did.

Ques. Did he examine your memorandum in your presence?

Ans. He did. I talked with him about them. At this time he wished to have me release a mortgage upon property he had contracted with his brother, and he offered me other lands in place of that land which he wished to get the money on.

Ques. Did he at this interview, June 9th, 1874, claim you had any responsibility for the Noxon notes in being already extended?

Ans. He did not.

Ques. Did he at that time pretend to have any claim upon you for the Eaton lands?

Ans. He did not.

Ques. Did he at that time set up any such claim as has been set up in this bill of complaint?

Ans. No, sir; he did not at the time I returned the notes to him, but a few days afterwards he did.

Ques. Did he at this time wish to exchange any mortgage?

Ans. He wished me to release some lands, and take some other lands in its place.

Ques. Was any agreement made about that?

105 Ans. I was reluctant to do it, but I finally consented to examine the list of lands which he wished me to take.

Ques. At this time did he bring you a paper from Geo. M. Fletcher?

Ans. Shall I say a word or two more? I have said I consented to examine the list of lands.

Ques. Yes, sir; explain that.

Ans. He subsequently offered me a list, and I found they were mortgaged, and I declined to take them.

Ques. Did he bring you a paper from Geo. N. Fletcher?

Ans. He did.

Ques. When?

Ans. June 11th, I believe; shortly after the interview previously referred to.

(Paper is here produced and marked C D, and offered in evidence.)

Ques. He brought you that paper, did he?

Ans. Yes, sir.

Ques. Who is Fletcher?

Ans. He is a resident of this city.

Ques. What dealings had he with Richardson about the matter, if any, if you know?

Ans. I don't know as prior to this he had had any, but subsequent to this I know he held Richardson's papers, because when I came down here that spring two or three weeks after this he showed me the contract which I had given Richardson Oct. 1st, 1868, and the letters, and he seemed to have possession of Richardson's papers. I suppose they were put into his hands about the time of this notice.

Ques. Was a suit commenced against you in Alpena, June, 1874?

Ans. There was no service upon me.

Ques. Did you ever refer Spratt to Richardson in any way about his rights in the land?

106 Ans. What Spratt?

Ques. F. D. Spratt.

Ans. I have no recollection of doing so. He states in his testimony, I think, that prior to making the contract for stumpage I referred him to Richardson; that is not true. The contract was not made between me and Spratt, but was made by J. M. Johnson as my agent.

Cross-examination:

Mr. HOLBROOK. Did the complainant pay you for any timber taken off these lands mentioned in this contract with him?

Ans. Yes, sir; he paid me in this way, he gave me an account of the amount of stumpage he had cut off, and I charged it to him in book account, and in the final balancing of the account that we was squared by giving notes, or in some other way.

Ques. What amount of stumpage did he account to you for? I would like a statement of your land account as to the Eaton lands.

(Witness produces a paper.)

The WITNESS. In making up the paper account I charged interest on all outlays at ten per cent., and credited interest at the same rate for all proceeds on the same system, making it annual interest in each case.

(The paper is offered in evidence and marked Exhibit L M.)

Ques. You credited on this the sum of $5,073.75; does that include all that you received for the timber sold on that land up to July 1st, 1870?

Ans. Yes, sir, and interest.

Ques. Does that include the timber sold to A. R. Richardson?

Ans. Yes, sir.

Ques. The whole amount?

107 Ans. Yes, sir.

Ques. Does that include the timber sold to Spratt?

Ans. No, sir; it was not sold until after that time.

Ques. What amount of timber did you sell to Spratt?

Ans. There are two Spratts.

Ques. F. D. Spratt.

Ans. A little over a $1,000.

Ques. Have you got the figures and the date of payment?

Ans. Yes, sir. He paid me a thousand dollars. You have the bill that gives the scale.

Ques. You received from F. A. Spratt $1,150?

Ans. In all.

Ques. When did you make a contract with him to sell him any of that timber?

Ans. January 15th, 1871.

Ques. You sold timber to George Richardson. What was the date of that sale, or the contract to sell it to him?

Ans. October 10th, 1870.

Ques. What amount did you receive from Geo. Richardson?

Ans. You have it on that statement.

Ques. It don't appear as anything received from George Richardson. Will you state, if you please, what you received from Geo. Richardson on the contract of sale to him?

Ans. $3,387.90.

Ques. Did you make two sales to him at any time?

Ans. No, sir.

Ques. You never had but one contract with him?

Ans. One contract. There is an item here, "Interest on the above, $56.46." I should have to refer to my other accounts to know. He may have paid that at the same time with the other; he did not pay me at the time it was due.

Ques. Did you sell stumpage to any one else besides Spratt and Richardson?

108 Ans. Not during those three years.

Ques. Did you at any time?

Ans. I have since.

Ques. To whom?

Ans. I contracted to sell stumpage to A. N. Spratt, and then afterwards I sold him the land.

Ques. Did he pay anything for the stumpage?

Ans. No, sir.

Ques. You sold him the land when?

Ans. I think it was in 1873.

Ques. And for how much?

Ans. I don't know now; I have not my account. I brought these accounts; they were drawn off before that was settled up. I don't know, I have not my pine land figured up only down to the expiration of the three years.

Ques. Have you an account in any book?

Ans. I can tell you the account from recollection. $7,000, the amount of the sale I made to A. N. Spratt.

Ques. Can you tell at what time you made that sale?

Ans. I cannot state the time. It was changed from a contract for stumpage to a sale of the land.

Ques. At what time was the contract for stumpage made?

Ans. It was made in 1872—Jan., 1872.

Ques. And that contract for stumpage was afterwards changed to a sale of the land?

Ans. Yes, sir.

Qu. Can you state when the sale was made?

Ans. I cannot now.

Ques. Near when?

Ans. Perhaps it was made in 1873—summer of 1873.

Ques. The contract for stumpage was in full force until the contract for the sale of the land was made?

109 Ans. He thought it would be for his interest to lump the matter; and I made him an offer, and he closed it in that way.

Ques. Did you receive stumpage from anybody else at any time until you sold the land?

Ans. No, sir. I think I have already stated that I received $150 from F. D. Spratt, closing up his contract.

Ques. That makes $1,150?

Ans. Yes, sir. That is all the stumpage I ever received.

Ques. You stated you received from Geo. Richardson how many thousand dollars?

Ans. $3,387.90.

Ques. Is that the whole amount that was due from Geo. Richardson?

Ans. Yes, sir.

Ques. The whole amount you received from him?

Ans. Except an item of interest he did not pay when due.

Ques. Are any of these lands mentioned in the contract for Richardson unsold?

Ans. Yes, sir.

Ques. What descriptions?

Ans. Part of school lands.

Ques. Is that the land bought of the State?

Ans. Yes, sir.

Ques. That whole tract remains unsold?

Ans. There is one tract by itself. I don't now remember the amount that remains unsold.

Ques. To whom did you sell any of that land besid' Spratt.

Ans. Mason, Luce & Co.

Ques. That was sold for $22,000, was it not?

Ans. Yes.

Ques. And it was made on the 2ond day of Sept., 1872?

Ans. Yes, sir. There was a contract for a sale. No deeds passed—never has been paid for yet.

Ques. How much has been paid you?

110 Ans. I think there is between four and five thousand dollars now due.

Ques. Have you received any money for any of these lands for the stumpage—for the timber—except such as you have specified here?

Ans. No, sir.

Ques. What has become of the Noxon notes—they were not paid?

Ans. I returned them to Richardson.

Ques. When?

Ans. In June, 1874.

Ques. Richardson had the privilege of applying the proceeds of those notes either on your mortgage, which you held against him, or on this land contract, didn't he?

Ans. No, sir.

Ques. What did you mean in your letter of Nov. 17th, 1868, when you struck a balance of $4,778, by saying the above amount will go on account of your notes which I hold, or on account of pine lands which I have purchased in connection with you?

Ans. I don't think I ever wrote any letter saying that that amount would go to that. If I remember right I say when paid, or if paid we will apply thus and so. I don't think I say I have that amount to apply, do I?

Ques. "The above amount will go to pay on account of your notes, or on account of——

Ans. I think I have a copy of the letter here. (Produces a letter.)

Ques. "The above amount will go to pay on account of your notes which I hold, or on account of the pine lands which I have purchased in connection with you." I merely ask you what you mean by that language?

Mr. RUSSELL. In whose handwriting is that?

111 Ans. Mr. Fletcher's. I mean I should give him credit; if the notes were applied in no other way I would apply it to the payment of the land, or apply it on the notes.

Ques. On lands? Did not that refer to the lands in dispute; relating to which this suit was brought?

Ans. Undoubtedly it did.

Ques. Those Noxon notes were held by you and extended from time to time up to 1873, were they not?

Ans. No, sir; not extended to 1873, to 1871.

Ques. It was the same date, is it not, which is represented by the notes which you returned to Richardson?

Ans. A part of them; a part of it was paid and the balance returned to him.

Ques. It is the same Noxon debt referred to in your letter, is it not?

Ans. It is a portion of it.

Ques. When did you return those notes to Mr. Richardson?

Ans. June 9th, 1874, I think.

Redirect examination:

Mr. RUSSELL. Was there ever any agreement between you and Richardson in respect to that appropriation of payments? Were you not at liberty, so far as he was concerned, to make the appropriation of any sums coming into your hands on the bond and mortgage debt, at any time?

Ans. Yes, sir; and I did apply it on the notes at his request.

Ques. He requested you to make the application of stumpage on the notes?

Ans. Yes, sir; I showed him a statement in Alpena, and there was a balance on the books in his favor, and he requested me to apply it on the notes, and I did so.

Ques. Did he ever set up any claim that you should appropri-
112 ate the stumpage of the timber cut on the Eaton lands in part payment of his interest in the lands?

Ans. I never heard of his making any such claim until this suit was commenced.

Ques. And you say he expressly requested you to appropriate it upon the bond and mortgage debt?

Ans. Yes, sir; he did.

Ques. Did A. R. Richardson ever put any money into this land?

Ans. He never did.

Ques. Did he ever have any care or risk about it in any way?

Ans. He never did.

Ques. Does he owe Geo. N. Fletcher?

Ans. I am speaking about the land after I became interested in it.

Ques. Does A. R. Richardson owe Geo. N. Fletcher; do you know?

Ans. He did; I don't know whether he does now.

Ques. Do you know whether Fletcher put up Richardson to bring this suit against you upon the idea that some money might be got out of you to pay Geo. N. Fletcher?

Ans. I have strong impressions that lead me to believe so; I was told by——

(Objected to as incompetent.)

A paper is shown to the witness.

Ques. What is this paper?

Ans. It is a memorandum stating the amount he was owing me in May, 1870, and also his agreement not to cut any further stumpage from my land.

Ques. Where is the copy?

Ans. I think that was put in the foreclosure suit.

(The paper referred to by witness was marked Exhibit 2 in the foreclosure suit of.)

113 ALPENA, *December 11th*, '73.

Mr. HARDWICK:

DEAR SIR: Yours of the 3' is received. I was just thinking of writing you before I received yours. I expected this panic would have affect on such men as Noxon. My ideas are to give them a few months' more time until times are better if there would be no more risk. I wish you to do as you think best, as you know better than I do. I would like to have it settled up within four or five months if possible. I am not lumbering this winter. I let a little job to finish up where my camps were, about a million. Times are terrible hard here this winter.

Yours, &c.,

A. R. RICHARDSON.

ALPENA, *Feb. 19th*, '71.

Mr. HARDWICK:

SIR: I received your letter a week since. I see you do not understand exactly my object in writing you before, but as there will be no more trades made before I see you probably I will say no more on that subject, but when I see you I will have a long talk, as I am better at that than writing. I think I can pay you at any time next summer what I owe you with 2 weeks' notice, but have not made any calculations on paying you till next fall. The most of my payments come due late next season. I am getting along nicely this winter; in the place of buying this winter I am selling. I have to sell on long time; I cannot sell anything for cash. Please write when you are coming
114 out here & what you have done with Noxon.

Yours, &c.,

A. R. RICHARDSON.

B. C. HARDWICK:

Will you please give to A. R. Richardson the exact account of all transactions connected with the Eaton lands, under your contract with him of Oct. 1st, 1868? By so doing you may save some trouble and annoyance. He wishes me to examine it in order to save you both a lawsuit.

Yours, truly,

GEO. N. FLETCHER.

JUNE 11TH, '74.

115 Memorandum of agreement, made this eighteenth (18) day of May, A. D. 1868, by and between Arthur R. Richardson, of the village of Alpena, county of Alpena, and State of Michigan, party of the first part, and S. Mitchell Noxon, of said village, county, & State, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum hereinafter stated, does hereby sell and convey to the said party of the second part one million five hundred and forty thousand and seventy-two (1,540,072) feet of white pine saw logs marked R X R, also two hundred and seventy-eight thousand four hundred and forty-four feet of saw logs marked V V V (278,444), according to the measurement of Charles H. Rice, esq., and the said party of the first part further agrees to deliver the above-described saw logs in Thunder Bay River, below Trowbridge Dam, before the close of what is termed among lumbermen

the June freshet, 1868. The party of the second part, in consideration of the above covenants on the part of the party of the first part, hereby agrees to pay at the rate of nine $\frac{50}{100}$ dollars ($9\frac{50}{100}$) per thousand feet for the above described saw logs in the following manner, viz: Five thousand (5,000) dollars upon the execution of this contract, and the balance that may thereafter be found due to be paid in three equal payments, on the first days of July, August, and September next.

Any of the above-described saw logs not delivered over Trowbridge's Dam by the time specified shall be deducted from the quantity
116 purchased and the value of the same at the price herein agreed upon shall be deducted equally from the two last payments specified in this contract.

A. R. RICHARDSON. [L. S.]
S. MITCHELL NOXON. [L. S.]

[Stamp.]

Witness:
B. C. HARDWICK.

For value received I hereby guarantee that S. Mitchell Noxon shall perform his part of the above contract.

ROSWIN R. KENNEDY.

117

Mem. of cash paid on account of pine land from date of purchase to Dec. 1st, 1870.

May 1st, 1867.	Purchased of D. Carter and wife as follows: W. ½ of NW. ¼ & SE. ¼ of NW. ¼ of sec. 25, in town, 29, north range 4 E., 120 acres, @ $5 per a....	600
June 1st, '67.	Purchased of State of Mich. as follows: E. ½ of NE. ¼ & E. ½ of SE. ¼ of sec. 16, in town. 28 north, range 3 E., & S. ½ of SW. ¼ of sec. 16, town. 30 N., R. 3 E., 240 acres, @ $4 per a..	960
Nov. 14, '67.	Purchased of T. H. Eaton as follows: NW. ¼ of NW. ¼ of sec. 1, & NE. ¼ & E. ½ of NW. ¼ & NE. ¼ of SE. ¼ of sec. 2, town. 30 N., R. 6 E., & E. ½ of SW. ¼, & W. half of SE. ¼ of sec. 26, & E. ½ of SE. ¼, & SE. ¼ of NE. ¼ of sec. 34, & W. ½ & SW. ¼ of NE. ¼ of sec. 35, town. 31 N., R. 6 E.; 903 36/100 acres, @ $9 per a.....	8,130
	Paid commission to Mr. Slawson for services in connection with above purchase.....	386 70
	Stamps & recording deed.....	4 20
	Taxes for 1867 on Eaton land.....	67 56
Dec. 1st, '68.	Taxes for 1868.....	81 47
June 1st, '69.	Expenses paid Dyer..	10 50
Dec. 1st, '69.	Taxes for 1869.....	63 72
Dec. 1st, '70.	Taxes for 1870.....	84 28
		$10,388 43

118

Statement of land account, with interest added, to November 14th, 1870, not including anything for my services or traveling expenses,

Eaton land charged at $10 per acre, the price at which I agreed A. R. R. might be interested.

May 1st, '67,	Paid D. Carter.....		600
	Int. compounded to Nov. 14, '70.....		241 41
June 1st, '67.	Paid State of Mich..		960
	Int. comp'd to Nov. 14, '70.....		375 61
Nov. 14, '67,	Eaton land 903 36/100 a. @ $10 per a.....		9,033 60
	Int. comp'd to Nov. 14, '70.....		2,990 12
	Com. taxes for 1867 &c., of Eaton l.....		458 46
	Int. to Nov. 14th, '70.		151 74
Dec. 1st, '68.	Taxes for 1868.....		81 47
	Int. to Nov. 14th, '70.		16 73
June 1st, '69.	Expense.....		10 50
	Int. to Nov. 14th, '70.		1 58
Dec. 1st, '69.	Taxes for 1869.....		63 72
	Int. to Nov. 14, '70....		6 10
Dec. 1st, '70.	Taxes for 1870.....		84 28
			$15,075 32
July 1st, '69.	Sold from above Eaton land to A. R. Richardson 2,700,000 ft. white pine sawlogs, @ $1.50 per thousand ft....	4,050	
July 1st, '70.	Sold to same 219 M. @ $2	438	
	Int. on $4,050, comp'd to Nov. 14th, '70	569 57	
"	" Int. on $438, comp'd to Nov. 14th, '70.....	16 18	5,073 75
			$10,001 57

Balance against land 8/100 Nov. 14th, '70, after the agreement with Richardson of Oct., 1868, had expired.

Statement of land ⅔ from November 14th, 1870.

	Balance Nov. 14th, per statement.....	10,001 57		Received from McMaster & Co. for 1,935,947 ft. mix. timber	3,387 90
Nov. 14, '71.	One year's interest...	1,000 15		Int. on above rec'd..	56 46
May 1st, '71.	Expenses paid Dyer & Johnson.....	20 00		Rec'd from F. D. Spratt for stumpage.....	1,000 00
Dec. 1st, '71.	Taxes for 1871.....	104 09		Balance.....	6,681 45
		$11,125 81			$11,125 81

119 (Copy.)

To balance on books	782 45
Mort'age note April 30, '70 (demand).....	5,932 29
" " May 16, '70 (3 months).....	1,280 58
" " " "	1,000
Stumpage from Eaton land estimated a 2.25 M feet, @ $2..	450
	$9,445 32

ASSETS.

I hold a note of E. Harrington for.....	500
Also note of A. & S. M. Noxon, endorsed by R. R. Kennedy, which, when paid, will lessen the above amount, May 18, '70.....	3,000 00

It is hereby agreed that no more timber is to be cut from land of B. C. Hardwick, or land on which B. C. Hardwick holds a mortgage, without the written consent of said Hardwick.

Alpena, Mich., May 27, '70.

A. R. RICHARDSON.

Ex. 2.

120 ALPENA, MICH., *May* 18, '68.

Received of S. M. Noxon cash two thousand dollars; also his two notes, order of and endorsed by A. Noxon, this date, payable at the National Insurance Bank, Detroit, each fifteen hundred dollars, at forty and sixty days' time. The above received as satisfaction of first payment on contract of this date for saw-logs.

A. R. RICHARDSON.

(Copy.)

ALPENA, *June* 13, '68.

S. MITCHELL NOXON, Esq.:

DEAR SIR: You will please to pay B. C. Hardwick, or his order, the amount coming to me on account of logs sold you last month.

A. R. RICHARDSON.

ALPENA, MICH., *June 18th*, 1868.

Received of S. Mitchell Noxon this 18th day of June his notes, described as follows, to wit: One due the 1–4 July next, $2,000$; one due the 15–18 July next, $2,000$; two due 1–4 August next, $2,000$ each; two due 1–4 September next, $2,000$ each. The above notes are dated

this day, payable at the National Ins. Bank, Detroit, Mich., to the order of A. R. Richardson, and, when paid, to apply on log contract of March 18th, 1868.

B. C. HARDWICK.

[U. S. revenue stamp.]

(Endorsed:) Filed July 21, 1877. A. Mandell, cl'k.

121 BENJAMIN C. HARDWICK, recalled:

Q. Since your last examination were you present at the time of Amzi Slawson's deposition in N. Y.?

A. Yes, sir.

Q. Will you state whether his account of the alleged agreement made between you and him, in regard to the land in controversy, was correct?

A. It is not. I had no such agreement.

Q. You mean no such agreement as he testifies to?

A. No such agreement as he testifies to; nothing like it.

Q. Is his statement, relative to payment made by you to him for services, correct?

A. No, sir.

Q. What payments were made by you to him, and what for?

A. He had agreed to purchase the land of Mr. Eaton, and I paid him $25 the 21st of Nov., '67, in Alpena; paid Slawson for his services in bringing about the transaction; he said he had control of these lands. I had informed myself by interviews with several persons, as to the value of the lands. I supposed they probably would be a fair investment, and decided to buy them. I gave him $25 as I have stated, Nov. 21st, '67. I came down in the winter of '67-8, to this city; arrived here about the 18th of Jan. '68. On that day, the 18th of Jan., '68, closed the trade with Mr. Eaton. I then paid Mr. Slawson $300 addition to the $25, giving him my check for $150, and paying Mr. Eaton on Slawson's account $150. That was not in full for the amount that I had agreed to pay him for services, but I reserved the balance till I should know how much taxes for the previous year I should have to pay, to make them unencumbered; but I hadn't agreed to pay any back

122 taxes, but found I had to do so when I made the purchase. In May, '68, I went to Alpena, and learned that the taxes on this land for the previous year, which was then unpaid, was $64.94, which I paid. I also paid to Mr. Slawson at that time, May 11th, '68, the balance, which would then be his due, $61.70, making the total paid him of $451.66.

Ques. Did you make any payment to Slawson in connection with any other transaction, for the purchase of lands of Theodore Eaton?

A. No, sir.

Q. Will you explain the following language in your letter to the complainant, written Jan. 1868, and annexed as an exhibit to the testimony of the complainant, "I have also arranged your stumpage-matter with Eaton direct, and Slawson is to have nothing to do with it?"

A. Mr. Richardson had some preliminary arrangement with Mr. Slawson about the purchase of stumpage of Mr. Eaton, and as I came down that winter, Mr. Richardson wished me to attend to the matter for him, to secure him the stumpage. On the same day that I made the purchase of Mr. Eaton, I did arrange with him that Mr. Richardson should

have that stumpage, and it was done outside of Mr. Slawson, Mr. Eaton making the contract, or agreement between himself and Mr. Richardson, and I reported it to him.

Ques. Was this stumpage-matter referred to in this letter a separate and distinct transaction from the purchase of the land, which you made at the time from Eaton?

A. It was; it had no connection whatever with it.

Q. Was the stumpage referred to in that letter the stumpage on the land which you purchased from Eaton, or stumpage on other land?

A. On other land.

Q. Did you ever make any agreement with Mr. Slawson to
123 advance money for A. R. Richardson, or to take a deed of lands, namely, the deed which you received from Mr. Eaton, as security for advances to A. R. Richardson?

A. No, sir; did nothing of the kind.

Q. Did you ever employ Mr. A. R. Richardson to examine these Eaton lands prior to your purchase of Mr. Eaton?

A. No, sir; I did not.

Q. State whether you employed any person to examine them?

A. I didn't employ any person prior to my purchase; I had consulted persons who were acquainted with the lands, to satisfy myself that it was probably likely to prove a good investment; but after the purchase I did employ several persons; as I sold stumpage, I would send some one up to examine it. I sent up one Johnson, who was then a land agent in Alpena; I sent him up and paid him for his services; and I sent Mr. Dwyer up there the same way, to make a survey of the land that had been cut by some one who had lumbered on the land; but never employed Mr. A. R. Richardson.

Ques. Did you hear the testimony of Theo. H. Eaton, in which he testified the amount of land was 903 acres at $9 an acre?

A. I did.

Q. Will you state the gross amount paid by you to Mr. Eaton, and the amount of cash, and the amount of notes, and a balance, and what that balance was.

A. I have a memoranda here of the transaction with Mr. Eaton. The gross amount, 903 and 36 one-hundredths acres, @ $9, came to $81,130.24. Mr. Eaton crossed off the 24 cents and called it even $8,130. I gave him two notes, $3,140 each, making $6,280; which, deducted from the gross amount, left a balance of $1,850. I paid him on Slawson's account $150, making with the $1,850, $2,000. I paid him interest on this from Nov. 14th, '67, to January 18th, '68, the day the trade was consummated, $24.88, making $2,024.88, for which I gave him my check.

124 Q. Will you look upon the paper which is marked Exhibit H, in the foreclosure case of Hardwick against Richardson, one side of which paper *it* purports to be an account of Richardson with you, and the other side appears to be a letter addressed by you to Mr. Richardson; on the back of the same paper, dated "Quincy, Mass., Nov. 18th, 1868," and being the same letter to which the solicitor for the complainant called your attention in his cross-examination of yourself when you gave your former testimony, and will you explain the application of payments referred to in the paper?

A. As I had received payments in various ways on Mr. Richardson's accounts, I first put them to his credit on my books, and at this time there was a credit and a balance in his favor on my book accounts. He was at this time owing me on notes and mortgages, but that would ap-

pear and stand in "bills receivable." He had at this time a credit of $1,278.85 on my books. I also held for collection two notes of Noxon's of $1,500 each; which, if it was paid to me, would increase his credit; also the Janney note, $500, was held in the same way for collection. The amount actually to his credit here, and the amount subsequently collected on these papers which I held for collection were applied, at his request, on notes of his which I held.

(A copy of the paper, Exhibit H, is attached to this deposition.)

Q. State the value of the land at the time you purchased?

A. I supposed that they were well worth the amount I was paying, but didn't think them as valuable as they afterwards proved to be. I would have parted with them the following year at a small bonus.

Ques. A bonus of how much?

A. If I remember rightly, I offered to accept $1,000.

125, 126 Q. You mean a thousand dollars in addition to the sum you paid, and interest?

A. Yes, sir; a thousand dollars profit.

Q. That was in '68 or '69?

A. That was in '68 or '69, and as late as 1870, I felt that there was a good deal of doubt whether I should make anything on the investment, as much pine had been cut off, and my investment stood then at a large figure, over $10,000, and there was always large liability on account of fire.

127 QUINCY, MASS., *Nov. 17th*, 1868.

Mr. A. R. RICHARDSON:

DEAR SIR: From statement on the other side of this paper you will see how our account stands. I saw Jenny in Detroit as I was on my way home and spoke to him about the $500 note; he said he had been disappointed and couldn't pay, as he had agreed, but he promised within a few days to arrange it by giving John Owen's paper, due next spring. As Mr. Owen would probably be sure, I thought it better to make that arrangement, and accordingly instructed my bank to make the exchange, but don't know whether Jenney has done so or not. I wrote him two or three days ago relating to the matter. There is a balance due from Noxon of $3,000. You are aware that this amount was extended from the Aug. & Sept. payments; two notes, each $1,500, being given, due Nov. 4th and Dec. 4th. About the first of November Mr. Noxon telegraphed to me that he couldn't pay these notes when they come due. I went to his house, and he has given me a new note for $3,000, due next May, on which he agrees to pay the interest. Mr. Kennedy endorsed the note, which, I think, makes it sure.

As the matters stand now, you are credited with bal. a/c...	$1,278 05
Noxon's note to go to your credit when paid.....	3,000
Jenney's " " " " "	500
	$4,778 05

The above amount will go to pay on account of your notes which I hold as on account of pine lands which I have purchased in connection with you.

I think this will make matters plain to you. Please write me and let me know if it is so, and also if you are lumbering from the lands you intended to cut on when I left.

Yours, truly,

B. C. HARDWICK.

128 DR. *A. R. Richardson in account with B. C. Hardwick.* CR.

June 19	To cash per ⅜ rendered	4,053 00	By 6 notes of S. M. Noxon, each $2,000, due at sundry times, received for collection		12,000 00
July 1	2 checks on Nat'nal Ins. B'k, cash $500	1,000 00			
" 7	Check " " "	500 00	1 note of S. M. Noxon due June 30		1,500
" 8	" " " " "	500 00			
" 13	" " " " "	600 00	Interest received from Noxon on account of cash paym't		53
" 14	" " " " "	500 00			
Aug. 15	" " " " "	500 00	Interes' rec'd from Noxon on account of notes amount of $3,000 extended		72 33
" "	" " " " "				
" "	" " " " "	300 00			
July 13	" " cash from J. Frink & Co.	200 00	Notes of Wm. Janney, ag't		500 00
Aug. 13	" " cash from J. Frink & Co.	100 00			
Sept. 11	" " cash p'd S. Boggs p'r order.	100 00			
" 12	" " rec'd from Comstock per W. D. H.	66 00			
		445 66			
" 21	" " " " J. Frink & Co.	100 00			
Nov. 4	" " p'd J. W. Hale p'r order	350			
	" " expense attending to notes				
June 23	of S. M. Noxon, telegraphing, &c	5 00			
	" Discount on S. M. Noxon's note due Sept. 4th, used in payment of land to Eaton	27 62			
	To 2 notes of S. M. Noxon's each $1,500, due 1-4 of Nov. & Dec. remaining unpaid	3,000			$14,125 33
	Also note of Wm. Janney, ag't	500 00			12,847 28
		$12,847 28	By balance of account		$1,278 05

129 *Deposition of T. H. Eaton.*

In the United States circuit court.

ARTHUR R. RICHARDSON }
vs.
BENJAMIN C. HARDWICK. }

Deposition of THEODORE H. EATON, taken at the office of Alfred Russell, esq., by Charles Flowers, U. S. commissioner, on the 31st of October, 1877.

Ques. How long have you been a resident of this city?

A. 36 or 37 years.

Q. Have you been engaged during a considerable portion of that time in buying and selling pine lands and other lands in the State?

A. Somewhat.

Q. Do you know Mr. Hardwick, the defendant?

A. Yes, sir.

Q. How long?

A. Between 9 and 10 years.

Q. Do you know Mr. Richardson, the complainant?

A. Yes, sir.

Q. How long have you known him?

A. Perhaps a year or longer.

Q. Did you formerly own the land which is described in the bill in this case, sometimes called the Eaton land, being about 903 acres, in town 30 & 31, range 6, Alpena County?

A. Yes, sir.

Q. Did you make a sale of these lands in the year '68; and if so, to what person?

A. I always supposed I sold them to Mr. Hardwick. Mr.
130 Hardwick paid me for them and made the closing negotiations.

Q. To whom was your deed executed and delivered?

A. To Mr. Hardwick.

Q. Have you an entry upon your land-book of the transaction?

A. I have an entry on my land-book of the transaction. Mr. Hardwick purchased all the balance of my Alpena lands. On my land-book of the account of these lands in Alpena County I balance it and state, by an endorsement dated March '68, "that the balance of these lands are sold to Mr. B. C. Hardwick," and I crossed off on my land-book the entire Alpena land transaction with that entry. I have examined it this morning.

Q. That entry was made about the time of the selling, I suppose?

A. No; it was made some two or three months after. The entry says March, and the sale was, I think, in January.

Q. Had you owned these lands several years?

A. Many years. There originally were a great many more lands. I had sold other lands to other parties, and this was the balance of them.

Q. You mentioned that you received payments for the land from Mr. Hardwick; can you give the items of payments as near as possible?

A. I think there was about $2,000 in cash paid me, and there were two notes paid me for the balance, $3,140 each the notes were, making, all notes, $6,280.

Q. When and by whom were the notes paid?

Ans. The notes were paid before maturity; one note was 9 months, the other note was 18 months, but they were paid much before maturity by Mr. Hardwick. I think the notes were given about the 20th or 25th of Jan., perhaps, and they were paid about the 20th of June following, so that they were paid very much before maturity.

Q. Before making the sale to Hardwick, have you had negotiations relative to some lands with a person named Amzi Slawson?

131 A. I had.

Q. What became of that negotiation; how did it terminate?

A. That negotiation commenced by Mr. Slawson calling upon me and asking my terms—the price of this land. He frequently, during the whole summer and early autumn of '67, called in to talk about it. I gave him my figures, but I soon learned that he was a middle-man, a negotiator, and I declined to proceed any farther. I found Mr. Slawson a bore, in fact, and dismissed him, but he came back afterwards and renewed negotiations with me, and I then told him I could not talk to him any more, knowing that he was irresponsible, until he disclosed his principal, and he did so; that was, I think, the latter part of the month, in Dec., '67.

Q. Did any other persons make efforts to buy these lands at that time, in Jan., '68?

A. No one but Slawson.

Q. Did Mr. C. W. Richardson, or H. R. Morse, make applications at any time to your knowledge?

A. I sold from this body of lands to Richardson, in small quantities, and to Morse. Reed Richardson was a poor man; I sometimes sold stumpage, and occasionally I would sell him a 40, but nothing more; I don't think that I sold Charles Richardson any lands, but I may have done so. I sold these lands to various parties, to L. M. Mason and others; I sold stumpage to Mr. Fletcher.

Q. Have C. W. Richardson or H. R. Morse made applications for the lands which you sold to Mr. Hardwick?

A. No, sir.

Q. Did you ever give Slawson A. R. Richardson's note for $300, or

any other amount, to apply upon Slawson's commission in selling the lands sold to Hardwick?

132 A. I did not.

Q. Do you remember whether Mr. Hardwick gave you a check for $150 as a part of Slawson's commission, and do you remember whether you applied that upon an indebtedness of Slawson's to you existing at the time?

A. I will not be positive about that, I have examined my books; my books merely state that I sold these numbers of acres at $9 an acre, and I extended the amount of the cash payment and the notes to balance that sum; I think I had some transaction though with Mr. Slawson in the matter of stumpage of some tax-lands that joined these lands, but it is ten years ago, and I don't remember positive; it is possible he did so, but I would not swear to it.

Q. You mentioned a few moments ago that Mr. Slawson did disclose his principal, will you state who he named as his principal?

A. He named B. C. Hardwick.

Q. Did you look at your book to see whether there was an entry of the receipt from Mr. Hardwick of a check of $150?

A. Yes, sir; I don't find it, it could not have been in a separate check; my books don't separate it at all.

Q. I suppose your books do not enable you to decompose the amount of the payment into its separate elements?

A. No, my impression is that it was all one check.

(Signed) THEO. H. EATON.

(Endorsed:) Filed Nov. 6, 1877, by A. Mandell, cl'k.

133 *Testimony of John Ward.*

Circuit court of the United States for the eastern district of Michigan.
In equity.

ARTHUR R. RICHARDSON
vs.
BENJAMIN C. HARDWICK.

Testimony of John Ward, on behalf of the defendant, taken by consent, before Henry Russel, notary public, at Detroit, July 20, 1877.

D. C. Holbrook, esq., appeared for complainant; Alfred Russel, esq., for def't.

STATE OF MICHIGAN,
County of Wayne, ss:

JOHN WARD, being sworn, says:

I am a practicing lawyer in Detroit, and know the complainant, Richardson, A. R. I made him a loan in Sept., '71, of $6,000 for Henry Barnard, of Springfield, Vermont. My books show the date. The mortgage is dated Sept. 28, 1871. A. R. Richardson's mortgage was on property in the city and county of Alpena. There were prior mortgages on a portion of the property to B. C. Hardwick, the defendant, two, I think, of about $1,000 each. I paid Richardson three thousand dollars on the second day of October, 1871, and from the balance I reserved sufficient to cover the Hardwick mortgages and the expenses of making the loan. The small balance still due Richardson, I think, was

paid on an order to George Prentis within the next two or three months. This is the only transaction I ever had with Richard-
134 son. Never had any negotiations with respect to loans, aside from this loan, except collections of interest, which was uphill work.

(S'g'd) JOHN WARD.

Cross-examination waived, and objection made to all the foregoing testimony for irrelevancy.

H. R.

Sworn and subscribed this 20th day of July, A. D. 1877, before me.
(S'g'd) HENRY RUSSEL,
Notary Public, Wayne Co., Mich.

(Endorsed:) Filed July 21, 1877. A. Mandell, cl'k.

135 EXHIBIT T, Y, B.

ALPENA, *May* 11, '68.

Received of B. C. Hardwick sixty-one $\frac{70}{100}$ dollars, in full, for commissions in connection with purchase of land of T. H. Eaton.
(S'g'd) A. SLAWSON.

Deposition of complainant.

In the circuit court of the United States for the eastern district of Michigan. In equity.

ARTHUR R. RICHARDSON }
vs.
BENJAMIN C. HARDWICK. }

To ALFRED RUSSELL, Esq.,
Solicitor for Defendant:

Take notice that Amzi Slawson, of the city of New York, State of New York, will be examined as a witness in this cause, and his deposition will be taken in behalf of the complainant in this cause at the office of George F. Betts, esq., in the United States post-office building, in the city and State of New York, a commissioner of the circuit court of the United States for the southern district of New York, on Thursday, the second day of August next, at eleven o'clock in the forenoon of that day, at which time and place you can attend and cross-examine said witness, if you think proper.

Detroit, July 24, 1877.

Yours,
(S'g'd) D. C. HOLBROOK,
Sol'r for Compl't.

136 ARTHUR R. RICHARDSON }
vs.
BENJAMIN C. HARDWICK. }

In the circuit court of the United States for the eastern district of Michigan. In equity.

STATE OF MICHIGAN,
County of Wayne:

E. Newell Pettee, of the city of Detroit, in said county and State, being duly sworn, doth depose and say, that on the 24th day of July,

1877, he served the annexed notice *of* Alfred Russell, esq., solicitor for the defendant, by delivering to him personally a true copy thereof.

(S'g'd) E. NEWELL PETTE.

Subscribed sworn to before me this 25th day of July, 1877.

ALBERT BURGESS,
Notary Public, Wayne Co., Mich.

(Indorsed:) Circuit court of the U. S. for the east. dist. of Mich. In equity. Arthur R. Richardson vs. Benjamin C. Hardwick. Notice to take deposition of Amsi Slawson, of New York. D. C. Holbrook, sol'r for compl't.

137 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, & State of New York, ss:

Be it remembered that on this second day of August, in the year of our Lord one thousand eight hundred and seventy-seven, I, George F. Betts, a commissioner duly appointed by the circuit court of the United States for the southern district of New York in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, new p. o. building in the city of New York, in the said southern district of New York, in the State aforesaid, Amzi Slawson, to testify, and the truth to say, on the part and behalf of the complainant in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the eastern district of Michigan, at Detroit, Michigan, wherein Arthur R. Richardson is complainant, and Benjamin C. Hardwick is defendant.

138 And the said AMZI SLAWSON, being about the age of fifty-three years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Amzi Slawson, and he did thereupon depose and testify and say, as follows, viz:

Q. Where do you now reside?

A. At Carmel, Putnam County, New York.

Qu. Where did you reside or spend the most of your time in 1867 and 1868?

A. In the State of Michigan, in Detroit & Alpena.

Q. Do you know certain lands called the Eaton lands, and which were conveyed by Theodore H. Eaton and wife, of Detroit, Michigan, to Benjamin C. Hardwick in 1867 or 1868?

A. Yes.

Q. Did you ever have either a verbal contract or understanding with Theodore H. Eaton to purchase these lands? If yea, state with whom, and at what price.

A. Yes; with Mr. Eaton, and at $9 per acre.

Q. Did you either verbally or in writing agree to sell these lands to any one; if yea, to whom, and at what price?

A. Yes; to Arthur R. Richardson, in the fall of 1867, at $10 per acre.

Ques. Were these lands examined by any person at or about that time to ascertain the quality & quantity of pine timber thereon? If you answer yea, state who made such examination; & if any, what report he made thereon, & to whom.

A. They were, by Mr. Richardson, & he reported to me verbally that it was all right—a good bargain, & satisfactory to him.

139 Q. Did you, before the purchase of these lands by defendant of said Eaton, apply to the defendant to purchase these lands for any other person; if yea, for whom & to whom did you apply? What was the result, & if any agreement was made, what was it?

A. I did; to Mr. Hardwick for A. R. Richardson. He consented to take the deed & hold the lands as security for money advanced, & he would become responsible for the second & third payments of the purchase-money. The first payment he was to make in cash.

Q. When did you next see the defendant after this agreement? If you answer that you did see him, state if it was by appointment, & for what purpose.

A. Soon afterwards—a short time—at Alpena. I had no appointment with him. I called on him in regard to his furnishing the money for Richardson.

Q. State what Hardwick said or agreed to on that occasion, if anything.

A. He said in reply to my asking if he would furnish the money, "I suppose you will divide the dollar with me?"

Q. What reply did you make?

A. I consented to divide the dollar, and allow him fifty cents per acre.

Q. After you first saw Eaton about these lands, who did you afterwards take to him, & for what purpose, & was the purpose accomplished?

A. I introduced Hardwick to him for the purpose of having him carry out his agreement, & advance the money. The purpose was accomplished.

Q. Do you know for whom the defendant bought these lands? If yea, state for whom, and how you know it.

A. For Arthur R. Richardson; & I know it because I made all

140 the arrangements for his doing it myself, personally.

Ques. In the payment for these lands by the defendant to said Eaton, was there more or less paid down in cash than you had promised or agreed to pay; & if there was, why was it?

A. I don't know that there was any particular sum agreed upon. I agreed to pay about one-third. It is so long ago that if I ever knew it has escaped my mind what sum Hardwick paid down.

Q. Did you receive any commission on the purchase of said lands; if yea, from whom, how, & what amount?

A. I received $300 from Richardson by his note, which he afterwards paid. I received Hardwick's check for $150. The exact amount due me on the transaction was $451.50.

Ques. If you heard the defendant say anything about the interest of the complainant in these lands, what have you heard him say?

A. I heard him speak of his holding these & other lands for Richardson.

Ques. If the defendant explained or said anything about taking a deed for these lands in his own name, what did he say about it; & if anything, what did he say about purchasing the lands for himself?

A. He never said anything in my hearing about his purchasing these

lands for himself. He said to carry out his agreement with me he would take the deed in his own name to hold as security for the money advanced.

Q. What was said, if anything, about the rate of interest that was to be charged by Hardwick on the advances made for the purchase of these lands for Richardson?

A. Whatever was said was that the interest should be the current rate at that time for money, which was 10 per cent.

141 Q. Do you know of anybody examining these lands & reporting to the defendant, except the complainant?

A. I do not know.

Q. What did the defendant say regarding the examination made of these lands by the complainant?

A. I don't know that he ever said anything to me on that subject.

Q. How did the defendant pay said Eaton for these lands?

A. He made a satisfactory cash payment to Eaton, and gave his notes for the balance, I think 2 notes, payable in 1 and 2 years.

Q. Were you in the habit of meeting the defendant when he was in Alpena in 1867 & 1868?

A. I generally saw him every day when we were both in Alpena.

Q. If you know, what would be the value of these lands after all the fine merchantable timber was taken off?

A. I don't think it would be worth anything—not even to pay taxes on.

Q. What, if anything, did defendant tell you after Janu'ry 1st, 1868, about the complainant having any interest in these lands?

A. I don't know that I ever had any talk with him on that subject after that date.

Q. Did said Eaton, on Jan'y 18, 1868, refuse to carry out the agreement he had made with you, & why did he refuse?

A. He did not refuse. He did carry it out as I made it with him.

Q. What agreement was it, & with whom made, did he carry out on selling these lands to the defendant?

A. The agreement that was made with me, & it was carried out to the letter, as I understood it.

Q. What assurance had you, or what did defendant say about his purchasing these lands for the complainant?

142 A. He gave me his promise to advance the money, & he did so. He said he would do it if I would give him 50 cents per acre.

Q. What was the real value of these lands at the time of purchase by defendant of Eaton?

A. Certainly not less than $20 per acre.

Q. During the next 10 years after this purchase could you, as a real-estate broker, have borrowed on these lands the amount due on them from Hardwick to Richardson?

A. Yes. There has been times since when I could have borrowed twice that amount, with the timber on it.

Q. Do you know any other matter or thing which may tend to the benefit of complainant? If yea, state fully.

A. I think I do. I know that Mr. Hardwick has several times expressed his confidence in Richardson, & has advanced money to Richardson to purchase land; & to enable him to make money out of it.

Cross-examined by defendant:

Q. Was your agreement with Eaton in writing in relation to purchasing these lands?

A. No.

Q. Was your agreement with Richardson in writing?

A. No.

Q. When was it that the applied to me to buy these lands?

A. Fall of 1867, in Detroit; I can't give the date; think November.

Q. Did you buy the lands of Eaton?

A. I did.

Q. When?

A. I think in Nov., 1867.

143 Q. Did he convey them to you?

A. No; he conveyed them to my order or direction.

Q. Was this at the same time?

A. No; it was in Jan'y following.

Q. Were you present when the deed of this land was passed?

A. Yes; I was present at Eaton's office during the whole time they were making out the papers, & saw them make the payments, heard all the conversation, & was there at the closing up of the business relating to these lands.

Q. When did you receive the note from Richardson?

A. At the close of the transaction.

Q. When did you receive the check for $150?

A. At the same time.

Q. Was that all I paid you on that account?

A. No; I rec'd the balance at Alpena.

Q. Did you ever receipt for any other amounts than $300 & $150?

A. Not that I know of.

Q. Who gave you the $300 note?

A. I think Mr. Eaton; I think it was sent by Richardson to Eaton, & by him sent to me.

Q. Do you know of any other report made of these lands, except the one made by Richardson?

A. I never heard of any.

Q. Were you in Alpena often after the spring of 1868?

A. I was not.

Q. When did you leave Alpena, prior to the final close of these transactions with Eaton?

A. Some time in December; about Christmas.

Q. When were you there next?

A. I was there in spring following.

Q. Did Eaton ever ask you who was or was to be the purchaser of these lands?

A. He did not, to my knowledge.

144 Q. Did you ever tell Eaton who the purchaser was?

A. I told him it was bought for Richardson.

Q. Are you aware my agreement with Richardson was put in writing?

A. I never knew of any written agreement between you & Richardson up to the date of the conveyance of these lands.

Q. Have you ever seen a written agreement relating to this land since?

A. I saw a copy of the original of an agreement between you and Richardson about pine lands. I don't know if the Eaton lands were included.

Q. Who showed you that agreement?
A. George N. Fletcher.
Q. When?
A. Within 2 months; perhaps shorter.
Q. Have you had any conversation with any one relating to the testimony you should give in this case?
A. Yes; with Mr. Fletcher.
Q. Have you had any correspondence with any one in relation to this case?
A. Yes.
Q. From, and with whom?
A. George N. Fletcher.
Q. Has any one indicated to you in any way what it was desirable for you to swear to in this case?
A. No, sir.
Q. At the time of my purchasing this land of Mr. Eaton was Mr. C. W. Richardson in Detroit?
A. I don't know that he was. I was not aware of it.
Q. Was Henry R. Morse there?
A. I was not aware that he was there at that time.
Q. How much did you receive for your commission in connection with this land purchase?
A. Fifty cents per acre—$451.50.
145 Q. Were you satisfied with the amount you received?
A. Yes.
Q. Did you not complain because taxes for the previous year had been deducted?
A. I think I did say something against it.
Q. Did you receive $25 from me in November, 1867, in Alpena, on account of your commission?
A. No, sir.
Q. How much did you receive in Detroit from me?
A. $150.
Q. How much did you subsequently receive from me on account of your commission?
A. That was all the commission on these lands, except $1.50 to make up the $450.50, the amount of my commission. Mr. Hardwick got the same amount, $451.50.
Q. Are you certain that that was all I paid you as commissions on the purchase of these lands?
A. Yes, sir.
(Paper handed witness.)
Q. Did you ever see that before?
A. I suppose I did. That is my signature.
Ex 1. (Marked Ex. 1., G. F. B.)

Redirect by Mr. J. FLETCHER:

Ques. Did you have any other transactions with Mr. Hardwick in regard to the purchase of other lands of Mr. Eaton to which Ex. 1 annexed hereto referred?
A. I had other transactions with Mr. Eaton, and Ex. 1 represents a part of the profits on other lands.
Q. Has the receipt Ex. 1 any connection whatever in regard to the transaction relating to the lands now in question?
A. None whatever.

146 Recross, by Mr. HARDWICK:

Q. Was there not a balance of your commission held back until the taxes for 1867 had been ascertained?

A. No balance in the matter in question except $1.50, which was afterwards paid.

AMZI SLAWSON.

147 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, George F. Betts, a commissioner duly appointed by the circuit court of the United States for the southern district of New York in the second circuit under and by virtue of the Revised Statutes of the United States, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause of the caption of the said deposition named, and that he resides at a greater distance than one hundred miles from the place of trial of this cause.

I further certify that on the 2ond day of August, in the year of our Lord one thousand eight hundred and seventy-seven, I was attended by the counsel for the complainant, and by the defendants in person, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth; and the deposition being by me reduced to writing by my clerk in the presence of the witness, and from his statement, and after carefully reading the same to the witness he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of mailing the same with my own hand in the post-office of the city of New York, directed to the clerk of the circuit court for the eastern district of Michigan, the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named,
148 nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal this second day of August, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States one hundred & first.

[SEAL.] GEO. T. BETTS,
United States Commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York in the Second Circuit.

(Endorsed:) Filed Sept. 5, 1877. A. Mandell, cl'k.

149 *Affidavit of A. N. Spratt.*

Circuit court of the United States, eastern district of Michigan.
In equity.

ARTHUR R. RICHARDSON }
vs.
BENJAMIN C. HARDWICK. }

STATE & EASTERN DISTRICT OF MICHIGAN,
County of Alpena, ss:

AUGUSTUS N. SPRATT, being duly sworn, deposes and says, that he is the same Augustus N. Spratt whose testimony was taken in the above

entitled cause before John H. Stevens a notary public, in and for Alpena County, on the 23rd day of January, A. D. 1877, that in said testimony (p. 3), so taken, he testified as follows, to wit:

Question. When was the next time that you had any conversation with Mr. Hardwick about the purchase of this timber?

Answer. In the fall of 1871.

Q. Where did this conversation take place?

A. On a steamboat between here and Detroit, going down.

Q. Will you give this conversation as near as you can recollect, that you had with Mr. (p. 4) Hardwick at this time?

A. Mr. Hardwick was speaking to me about his affairs with Mr. Richardson; I asked him, referring to the promise I had made to Mr. Richardson, if he was at liberty to negotiate the sales of timber on said lands, he answered that he presumed that he was, at the same time referring to some kind of an understanding between himself and Mr. Richardson, and at the same time advising me to see Mr. Rich-
150 ardson in regard to his giving his consent to the consummation of the trade.

And that deponent further testifies (p. 5) as follows, to wit:

Question. At the time you saw Mr. Hardwick on the boat, did he assign any reason why you should see Richardson about his consent to the sale of the timber?

A. I think he referred to some promise or understanding where he was under obligation to notify Richardson before consummating a trade.

And deponent further says in regard to said testimony, that a long time had elapsed between the taking of said testimony, and the occurrence of the facts stated therein being nearly six years; that since said examination without cross-examination, Mr. Hardwick has informed deponent of certain facts and circumstances, which upon reflection and careful consideration, convinced deponent that said testimony was in some parts incorrect, that he is now positive, and so swears that the conversation referred to in said testimony, took place in 1871. That in said conversation with Mr. Hardwick, reference was made to an agreement or understanding which had existed, or which had at the time of said conversation wholly expired, and further deponent saith not.

AUGUSTUS N. SPRATT.

Subscribed and sworn to this 5th day of Sept., A. D. 1877, before me.
(S'g'd) W. H. JOHNSON,
Notary Public, Alpena County, Mich.

151 It is hereby stipulated by the parties hereto, by their respective attorneys, that the within affidavit of A. N. Spratt be, and hereby is, considered as and in lieu of his cross-examination, on his examination as a witness in said case.

D. C. HOLBROOK,
Att'y for Plaintiff.
ALFRED RUSSELL,
Att'y for Def't.

DETROIT, *Sept.* 11, 1877.

(Endorsed:) Filed Sept. 24, 1877. A. Mandell, cl'k.

152 (Indorsed:) U. S. circuit court, E. D. of Mich. In equity. A. R. Richardson vs. B. C. Hardwick. Affidavit of A. N. Spratt & stipulation that it stand as cross-examination. Filed Sept. 24, 1877. A. Mandell, cl'k. Alfred Russell, sol. for def't.

153, 154 *Note of issue.*

State of Michigan. In the circuit court of the U. S. for the east dist. of Michigan. In equity.

ARTHUR R. RICHARDSON
vs.
BENJAMIN C. HARDWICK.

29th OCT., 1877.

The above-entitled cause will be brought on for hearing at the next term of this court, notice having been served, on the part of the compl't, on Hon. Alfred Russell, sol'r for the def't, according to the rules of this court.

You will please place said cause on the issue-docket of this court for said term.

This cause notice for

D. C. HOLBROOK,
Sol'r for Compl't.

To the register of said court.

(En'orsed:) Filed Oct. 30, '77. A. Mandell, cl'k.

155, 156 *Note of issue.*

Circuit court of the U. S. for east. dist. of Michigan. In equity.

ARTHUR R. RICHARDSON
vs.
BENJ. C. HARDWICK.

This cause having been noticed by me for hearing at the next term, the clerk will enter it upon the term calendar accordingly.

ALFRED RUSSELL,
Sol. for the Def't.

Dated this 20th day of May, A. D. 1878.

(En'orsed:) Filed May 20, 1878. A. Mandell, cl'k.

157, 158 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court room, in the city of Detroit, on Friday, the eleventh day of October, in the year one thousand eight hundred and seventy-eight.

Present, honorable John Baxter, circuit judge, & honorable Henry B. Brown, district judge.

ARTHUR R. RICHARDSON, COMPLAINANT,
vs.
BENJAMIN C. HARDWICK, DEFENDANT. 1980. In equity.

This cause now coming on to be heard upon pleadings and proofs, is argued by counsel for the respective parties and submitted.

159 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to ad-

journment, at the district court room in the city of Detroit, on Monday, the twenty-fifth day of November, in the year one thousand eight hundred and seventy-eight.

Present, honorable Henry B. Brown, district judge.

ARTHUR R. RICHARDSON, COMPLAINANT,
v.
BENJAMIN C. HARDWICK, DEFENDANT. } 1980. In equity.

This cause having been heard upon pleadings and proofs, and the same having been duly considered, it is now by the court here ordered that the bill of complaint filed therein be and the same is hereby dismissed with costs to defendant.

160 *Opinion of Judge Brown.*

In the circuit court of the United States for the eastern district of Michigan. In equity.

ARTHUR R. RICHARDSON
vs.
BENJAMIN C. HARDWICK. } NOV. 26, 1880.

161 This is a bill for the specific performance of a land contract. In 1867 complainant was a resident of Alpena, and engaged in the lumber business. Defendant was then also a resident of the same place, and an owner and a dealer in pine lands, and possessed of means. In Jan., 1868, he removed from Alpena to Quincy, Mass., and was, at the time this suit was commenced, a resident of that State. Complainant, desiring to purchase some pine lands, applied to defendant for assistance. Lands were purchased in three different tracts, viz.:

1. A tract of 120 acres, of Daniel Carter, May 1st, 1867, for $600. The bargain was made with the complainant, but the deed was made to the defendant, who paid the money. The tract was undoubtedly purchased upon the recommendation of the complainant.

2. A tract of 240 acres, purchased of the State of Michigan, June 1st, 1867, for $960. The minutes of these lands were purchased by complainant of one Baker, for which complainant paid him fifty dollars of his own money.

3. A tract of $903\frac{36}{100}$ acres, bought of Theodore H. Eaton, November 14th, 1867, for $8,130. Complainant, who had previously examined the lands, made the bargain, through one Slawson, and was to pay ten dollars an acre, viz., nine dollars to Eaton, and one dollar to Slawson for commissions. He informed defendant of this, and defendant went with Slawson to Detroit in January, 1868, saw Eaton, who declined to recognize Slawson, but agreed to sell the lands to Hardwick, the defendant. Defendant took the deed in his own name, paid Eaton nine dollars an acre, and Slawson $451.66 for his commission, at fifty
162 cents per acre. Defendant was to have the other half of the commission himself. Upon completing the purchase defendant wrote Richardson the following letter:

"DETROIT, *Jan. 18th*, 1868.

"A. R. RICHARDSON:

"DEAR SIR: I have closed the trade with Eaton, and have a deed all right; have paid him considerable in cash, and balance in notes. I paid nine dollars and fifty cents per acre, and Slawson is to pay the taxes. Slawson may try to collect the taxes from you, but I think you

had better do nothing about it, as, by the trade here, I should not be willing to pay anything. I have also arranged your stumpage matters with Eaton direct, and Slawson is to have nothing to do with it.

"Would write you more, but am in a hurry; am to leave here to-night for the East. Say nothing to any one about this matter, and I will write you more fully soon. Slawson says he means you shall pay taxes. I pay Eaton nine dollars per acre, and Slawson half a dollar per acre. I have paid him nearly all now, and shall pay the balance as soon as the taxes are arranged, so that you can settle your individual matters with Slawson independent of me.

"Yours in haste,

"B. C. HARDWICK."

As soon as the trade was closed up Slawson returned to Alpena, and related to complainant the whole transaction. Richardson did
163 not see defendant until May, when he met him in Alpena, and the purchase was then made the subject of conversation, but nothing further was done until October 1st, 1868, when the rights of the parties were finally settled under the following contract.

"Description of lands.

"The above-described lands have been purchased by me under an arrangement with Arthur R. Richardson, as follows: It is understood that said Richardson may become equally interested in the above lands by paying to me one-half the purchase price of the lands, together with an equal share of all expenditures made by me for taxes, or any other purpose, and also ten per cent. interest on all capital furnished by me, in connection with his half interest. It is further understood that the purchase price of the lands bought of T. H. Eaton is to be reckoned at ten dollars per acre, and the terms of the above agreement are limited to two years from this date; said Richardson is to pay one-half his share in one year, and the balance in two years.

"ALPENA, *October* 1*st*, 1868.

"Arthur R. Richardson may cut timber on the within-described lands, on the following terms: He is to pay one dollar and a half per thousand feet, board measure, for all timber cut by him, and he further agrees to cut not less than 12,000 feet from each and every acre on which he may cut any, but in the event of his not doing so he agrees to pay for 12,000 feet the same as though that amount had been cut by him. The logs are to be holden for the stumpage, and to be his when paid for, it being understood that payment is to be made for the same when they come into market.

(S'g'd) "B. C. HARDWICK.
"ARTHUR R. RICHARDSON.

"ALPENA, *October* 1*st*, 1868."

The two years mentioned in this contract were subsequently extended to three.

164 In the spring of 1868 complainant cut off from these lands 225,000 feet, and paid defendant stumpage therefor to the amount of $450.

It will be observed that this was six months before the contract was executed, and it follows, of course, that this timber was not cut under that contract.

In 1869 complainant cut timber upon the Eaton lands to the amoun

of 2,700,000 feet, and paid complainant for the same one dollar and fifty cents per thousand, $4,050.

In June, 1871, defendant received of Richardson and McMasters, for one million nine hundred and thirty-five thousand nine hundred and forty-seven feet of logs, $3,387.90, on a contract made in the fall of 1870.

In the winter of 1870–'71 Frank D. Spratt also bought stumpage of the defendant, and paid therefor, on June 1st, 1871, the sum of $1,000.

In Jan., 1872, defendant sold to A. N. Spratt some stumpage, but afterwards in 1873, the contract was changed from stumpage to a sale of the land for $7,000.

Complainant also received of F. D. Spratt $150 for stumpage, closing his contract with him.

On the 2nd of Sept., 1872, complainant sold some of these lands to Mason, Luce & Co. for $22,000, all of which have been paid but about four or five thousand dollars.

The lands purchased of the State remain unsold to the amount of 240 acres.

These are substantially the facts of the case. I think the contract of October 1st, 1868, must be regarded as embodying the understanding of the parties at that time. This contract is unilateral. It gives
165, 166 to Richardson simply the option of becoming interested in the lands upon certain terms, provided those terms are complied with within two years. It is true it provides that he is to pay one-half of his share in one year and the balance in two years, but these words must be considered in connection with the prior stipulation, that he "may become interested," and that the terms of the above agreement, that is, his option to become interested, are limited to two years from date. The clause would then read as follows: "If Richardson shall elect to become interested, he shall pay one-half in one year and the balance in two years." There is no agreement on the part of Richardson to pay anything, except upon his election to become interested. As it seems to me, defendant could not have sued complainant for one-half the purchase price at the expiration of the year, and if the pine had been destroyed by fire, he would have been remediless. In other words, there is an agreement on the part of the defendant to sell, but none on the part of the complainant to buy. He agrees to nothing except to exercise his option within the limited time.

No trust can arise under such circumstances.

The contract further provides that Richardson may cut timber upon the land by paying for it, and care is taken that the title to the logs shall not pass until the stumpage is paid. There is certainly no express provision in the contract that half the stumpage be applied in payment of the lands, but complainant claims that this is implied from the relative situation of the parties and the circumstances under which the lands were purchased. These circumstances were simply that the complainant had procured the minutes; had examined the lands, and having no money of his own, had negotiated the purchase for the defendant.

These facts undoubtedly show that complainant had been of service
167 to the defendant; but the compensation for these services was contained in the proviso that complainant might become equally interested upon paying half of the purchase price, notwithstanding any appreciation in the value during the next two years. It does not seem to me that these facts prove or tend to prove that half the value of the timber cut should be endorsed upon the contract. It is true that such contracts are not infrequently made, and that they sometimes contain

a proviso that a portion of the stumpage shall be endorsed upon the contract by way of part payment, as was the case in Ortmann vs. Shaw, 37 Mich., but I know of no rule of law that requires me to interpolate these words where the parties themselves have not seen fit to do so.

But it is claimed the parole evidence in the case establishes this fact; it is exceedingly doubtful whether parole evidence can thus be received to add to the terms of a written contract. Clearly it is inadmissible to contradict or vary its terms. (Greenleaf's Evidence, sec. 275; 3 Starkie, 296.) In some States such evidence has been received to incorporate new provisions where the original contract was verbal and entire, and a part only of it was reduced to writing. 1 Greenleaf on Evidence, sec. 284, but I believe this privilege confined to cases where the contract is of such a nature as to indicate on its face that it did not embody the entire agreement of the parties. The Supreme Court of the United States does not seem to have passed upon the direct question, but the general expressions used by that court in its later decisions would seem to indicate it did not look upon it with favor. (Brown vs. Spofford, 95 U. S., 474; Forsythe vs. Kimball, 91 U. S., 291.) It is at least doubtful whether it could be applied to a 168, 169 contract of this kind relating to the sale of real estate. But however this may be, it is very clear that the burden of proof is upon the party seeking to interpolate the new provision, and that he is bound to make it out by a clear preponderance of testimony. In this case, however, there is no such preponderance, while the complainant swears distinctly to such an agreement, the defendant, with equal positiveness, denies it. There are other circumstances in the case which render it very doubtful whether any such agreement was ever made. Although complainant cut timber upon these lands during the three years that his option was in force, defendant never endorsed any payments for stumpage upon the contract, and complainant never demanded it until this suit. If complainant, as he now claims, had paid or nearly paid for his half of these lands during the time limited by the contract, it is singular that he never asked the complainant for an accounting or demanded a settlement until nearly three years after his option expired, when he seems to have placed the case in the hands of a friend to obtain a settlement. This was in June, 1874, nearly two years after the large sale to Mason, Luce & Co. This bill was not filed until December, 1875. During all this time complainant was indebted to the defendant in large amounts, and defendant had commenced the foreclosure of the mortgages. The complainant has never paid anything in cash upon this contract. Under these circumstances it seems to me inequitable to decree a specific performance.

A decree will be entered dismissing the bill.

(Endorsed:) Filed Dec. 31, 1878. A Mandell, cl'k.

170 *Defendant's taxed bill of costs.*

In the circuit court of the United States for the eastern district of Michigan. In equity.

ARTHUR R. RICHARDSON }
vs.
BENJAMIN C. HARDWICK. }

Attorney fee, by statute on final hearing	$20 00
Cost of taking deposition	24 00
Cost of printing record by stipulation, ½ to compl't	48 90

Solicitor's fees on filing depositions by statute:

A. N. Spratt	2 50	A. Slawson	$2 50		
D. Carter	2 50	B. C. Hardwick, 2 dep.	5 00		
F. D. Spratt	2 50	T. H. Eaton	2 50		
A. R. Richardson	2 50	John Ward	2 50		
Geo. Richardson	2 50				
	12 50		12 50		
Total fees			25 00		25 00
Witness fees before comm'r.:					
Hardwick, 2 de's., 2 en			3 20		
Eaton, 1 " 1 "			1 60		
Ward, 1 " 1 "			1 60		
					6 40
Affidavit to fee bill					25
Taxation of costs					25
					$124 80

STATE OF MICHIGAN,
County of Wayne, ss:

Henry M. Campbell, being duly sworn, says that the foregoing items of costs charged as disbursements have actually been paid, or the liabilities therefor incurred, and were necessary and are reasonable in amount; that the witnesses above named were in good faith made to attend, and were deemed material and necessary, and they respectively traveled the number of miles, and actually attended the number of days specified, and that the copies and exemplifications charged for were actually and necessarily used, or necessarily and in good faith obtained for use.

(Sig'd) HENRY M. CAMPBELL.

Sworn to and subscribed before me this 26 day of November, A. D. 1878.

(Sig'd) WM. H. FLOX,
Notary Public, Wayne Co., Mich.

171 To D. C. HOLBROOK, Esq.,
Sol'r for Complainant:

Take notice: The foregoing is a true and correct copy of defendant's bill of costs in this cause, and of the affidavit of disbursements required by rule. Application will be made to the clerk of said court at his office on the 30 day of November, A. D. 1878, at 9.30 o'clock a. m., to tax the same.

Dated at Detroit, Nov. 26, A. D. 1878.

Yours, &c.,

ALFRED RUSSELL,
Sol'r for Def't.

STATE OF MICHIGAN,
County of Wayne, ss:

Henry M. Campbell, being duly sworn, says that on the 26th day of Nov., A. D. 1878, at 10 o'clock a. m., he served a true copy of the above bill of costs, with the affidavit and notice of application for taxation,

upon D. C. Holbrook, esq., sol'r for complainant, by leaving the same at his office with the person in charge thereof.

(Sig'd) HENRY M. CAMPBELL.

Sworn and subscribed before me this 26th day of Nov., A. D. 1878.

(Sig'd) W. H. FLOX,
Notary Public, Wayne Co., Mich.

(Indorsed:) No. 1980. The U. S. circuit court, e. d. of Mich. In equity. A. R. Richardson vs. B. C. Hardwick. Taxed billof costs for def't.

I do hereby tax the costs of defendant in the sum of $124 dollars and eighty (80) cents.

A. MANDELL, *Clerk.*

Dated Nov. 30, A. D. 1878.
Filed Nov. 30, 1878. A. Mandell, cl'k.

172 *Claim of appeal.*

In the circuit court of the United States for the eastern district of Michigan. In equity.

ARTHUR R. RICHARDSON
vs.
BENJAMIN C. HARDWICK.

The complainant, Arthur R. Richardson, in the above cause now comes and claims an appeal from the decree dismissing the bill in this cause to the Supreme Court of the United States.

(Sig'd) D. C. HOLBROOK,
Solicitor for Complainant.

DETROIT, *December* 3, 1878.
(Endorsed.) Filed Dec. 3, 1878. A. Mandell, clerk.

173 *Order allowing appeal.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court-room in the city of Detroit, on Tuesday, the third day of December, in the year one thousand eight hundred and seventy-eight.

Present, honorable Henry B. Brown, district judge.

ARTHUR R. RICHARDSON, COMPLAINANT,
vs.
BENJAMIN C. HARDWICK, DEFENDANT. } 1980. In equity.

The complainant in this cause, by Mr. Holbrook, his solicitor, comes and claims an appeal in this cause to the Supreme Court of the United States, which is hereby allowed by this court, and it is ordered that said complainant file a good and sufficient bond in the sum of five hundred dollars on appeal to the Supreme Court.

(Sig'd) HENRY B. BROWN.

174 *Copy bond on appeal.*

Know all men by these presents, that we, George N. Fletcher and Willard Parker, of the city of Detroit, are held and firmly bound unto

Benjamin C. Hardwick in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Benjamin C. Hardwick, or to his certain attorney, heirs, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves and our heirs, executors, and administrators, and each and every of them firmly by these presents. Sealed with our seals, dated the 23d day of December, one thousand eight hundred and seventy-eight.

The condition of this obligation is such that whereas lately at a session of the circuit court of the United States for the eastern district of Michigan, in equity, in a suit depending in said court between Arthur R. Richardson as complainant, and Benjamin C. Hardwick as defendant, a decree was rendered against the said Arthur R. Richardson, dismissing his bill filed in said cause, and from which decision he has claimed and there has been allowed an appeal to the Supreme Court of the United States, and said Richardson having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the said decree in the aforesaid suit, and a citation directed to said Benjamin C. Hardwick citing and admonishing him to be and appear at the Supreme Court of the United States to be holden at Washington on the second Monday of October, next:

175 Now, if the said Arthur R. Richardson shall prosecute his said appeal and writ of error to effect, and answer all damages and cost, if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

GEO. N. FLETCHER. [L. S.]
WILLARD PARKER. [L. S.]

D. C. HOLBROOK.

I approve the above bond Dec. 28, 1878.

HENRY B. BROWN,
Dist. Judge.

(Endorse:) Filed Dec. 28, 1878. A. Mandell, cl'k.

176 EASTERN DISTRICT OF MICHIGAN, *ss:*

I, Addison Mandell, clerk of the circuit court of the United States for the eastern district of Michigan, do hereby certify the above and foregoing to be a true copy of the bill, answer, pleadings, depositions, evidence, orders, proceedings, and decree, and of the bond on appeal, and of the original files and papers in the case in said court of Arthur R. Richardson, complainant, against Benjamin C. Hardwick, defendant, in equity; that I have compared the same with the originals of record in my office, and find the same to be true copies of said originals and of the whole thereof.

In testimony whereof I have hereto set my hand officially, and affixed the seal of said court, at Detroit, this fifteenth day of September, A. D. 1879.

[SEAL.] ADDISON MANDELL, *Clerk.*

Clerk's fees on transcript, $41.40.

(Indorsement on cover:) No. 83. Arthur R. Richardson, appellant, vs. Benjamin C. Hardwick. E. Michigan C. C. U. S. Filed 16th October, 1879.

OFFICE SUPREME COURT U. S.
FILED
NOV 4 1882
JAMES H. McKENNEY, CLK.

16-252

BRIEF OF COMPLAINANT.

SUPREME COURT OF THE UNITED STATES.

No. 83.

ARTHUR R. RICHARDSON, COMPLAINANT AND APPELLANT,

VS.

BENJAMIN C. HARDWICK, DEFENDANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR EASTERN DISTRICT OF MICHIGAN.

H. H. WELLS,
For Complainant.

D. C. Hardwick
Counsel

SUPREME COURT OF THE UNITED STATES.

No. 83.

ARTHUR R. RICHARDSON, COMPLAINANT AND APPELLANT

VS.

BENJAMIN C. HARDWICK.

APPEAL FROM CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN—IN EQUITY.

BRIEF OF COMPLAINANT AND APPELLANT.

STATEMENT OF THE CASE.

First. The bill in this cause was filed to compel the specific performance of a contract of which the following is a copy. (Exhibit A of bill).

EXHIBIT A.

Pine Lands.

West ½ of N. W. ¼ and S. E. ¼ of N. W. ¼ in sec. 25, town 29, R. 4 E.; E. ½ of N. E. ¼ and E. ½ of S. E. ¼ of sec. 16, town 28, R. 3 E.; and other descriptions.

The above described lands have been purchased by me under an arrangement with Arthur R. Richardson as follows: It is understood that said Richardson may become equally interested in the above lands by paying to me one-half the purchase price of the lands, together with an equal share of all expenditures made by me for taxes or any other purpose, and also ten per cent interest on all capital furnished by me in connection with his half interest. It is further understood that the purchase price of the

Extended one year (answer p. 7) to 3 years.

lands bought of T. H. Eaton is to be reckoned at $10 per acre, and the terms of the above agreement are limited to two years from this date. Said Richardson is to pay one-half his share in one year, and the balance in two years.

ALPENA, October 1st, 1868.

Arthur R. Richardson may cut timber on the within described lands on the following terms: He is to pay one dollar and a half ($1 50) per thousand feet, board measure, for all timber cut by him, and he further agrees to cut not less than twelve (12) thousand feet from each and every acre on which he may cut any; or in the event of his not doing so he agrees to pay for twelve (12) thousand feet, the same as though that amount had been cut by him. The logs are to be holden for the stumpage, and to be his when paid for. It being understood that payment is to be made for the same when they come into market.

ALPENA, October 1st, 1868.

B. C. HARDWICK,
ARTHUR R. RICHARDSON.

The facts in relation to this contract are as follows:

The complainant Richardson was a lumberman (p. 16); the defendant a capitalist. The complainant had made inquiries about (p. 16) and had personally examined (p. 20) some pine lands, and had personally paid (p. 20) for the minutes of other pine lands which he wished to purchase, and says he made an arrangement (p. 19) with defendant by which the defendant would furnish the money and purchase them and take a deed in his own name, and hold them as security until such time as the complainant should pay him the principal and ten per cent. interest, then he should deed the lands to complainant. Under this arrangement, made in 1867, all these lands were purchased.

There was purchased under this arrangement (see defendant's statement, page 54):

May 1, 1867, of D. Carter, 120 acres, for	$ 600
June 1, 1867, of the State, 240 acres, for	960
November 14, 1867, of T. H. Eaton, 903 acres, for	8,130
Total	$9,690

The defendant says he purchased the lands *for himself* (p. 37), with a view at the time of *allowing* the complainant to come in and be equally interested.

According to the statements of the complainant, he would be a borrower and the defendant a lender of money. The defendant denies that he was either a lender of money or a contractor to sell property, and claims that the complainant never had any interest in these lands.

Nearly a year after these lands had been bought the agreement (Exhibit A) was drawn by which the defendant was to have a half interest in these purchases.

Under this agreement the complainant, within eight months from its date, paid the defendant July 1, 1869, $4,050 for timber cut by him on this land, as provided in the agreement. July 1, 1870, the further sum of $438 50.

Timber was sold by mutual agreement (p. 24) of the parties to George Richardson, of McMartin & Co., and paid (p. 35) in June, 1871, $3,387 90, and interest, $56 40 (see account, p. 55); also timber to F. D. Spratt (p. 32) on June 1, 1871, for $1,000; and in July, 1872, $150 for timber cut in 1871.

On page 54 of record is an incorrect statement of the dealings up to November 14, 1870, made up by compounding the interest annually at 10 per cent.

The following is a true statement of the money paid and received by defendant during the three years to the 1st day of October, 1871, with interest at ten per cent.

1867.				
May 1,	Paid	D. Carter	$600 00	
		Interest to July 1, '69, 2 years 2 months	130 00	$730 00
June 1,	Paid	State of Michigan	$960 00	
		Interest to July 1, '69, 2 years 1 month	210 00	1,170 00
Nov. 14,	Paid	T. H. Eaton	$8,130 00	
		Commission to Slawson	386 70	
		Stamps and recording deeds	4 20	
		Taxes, 1867	67 56	
		Interest to July 1, 1869, 1 year, 7 months and 16 days	1,397 94	9,986 90
Dec. 1,	Paid	Taxes, 1868	$81 47	
		Interest to July 1, 1869, 7 months	4 73	86 20
June 1,	Paid	Expenses	$10 50	
		Interest to July 1, 1869, 1 month	08	10 58
		Whole amount paid to July 1, 1869, with interest added		$11,983 68
July 1,	1869,	Received of complainant, deducted		4,050 00
				$7,933 68
1869.		Interest to June 1, 1871, 11 months		1,520 50
Dec. 1,	Paid	Taxes, 1869	$63 72	
		Interest to June 1, 1871, 1 year and 6 months	9 60	73 32
1870.				
Dec. 1,	Paid	Taxes, 1870	$84 28	
		Interest to June 1, 1871, 6 months	4 20	88 48
				$9,615 48
1871.				
June 1,	Paid	By McMartin & Richardson (p. 35)	$3,387 90	
		By McMartin & Richardson (p. 35)	56 40	
		F. D. Spratt	1,000 00	
1872.		Complainant	438 00	
Oct. 1,	Paid	F. D. Spratt (p. 34)	150 00	5,032 30
				$4,583 18
		Interest from June 1, 1871, to October 1, 1871, 4 months		152 87
		The whole amount unpaid at end of third year		$4,736 05

One half, $2,368 02, was for complainant to pay.

Before the three years expired, in the fall of 1871 (p. 13), negotiations were opened by defendant to sell to Augustus N. Spratt seven thousand dollars' worth of timber standing on the Eaton lands (p. 12), and Spratt was referred (p. 13) by defendant to the complainant in regard to his giving his, the complainant's, consent (p. 13) to the consummation of the trade, and the complainant did give his consent (pp. 13, 69), and notified defendant of this consent (p. 14).

This sale was verbally made in Alpena, Michigan, before the three years expired, and was reduced to writing in January, 1872 (p. 14). The sale amounted to $7,000 for the *timber*, payable in 1872 and 1873. Afterwards the contract was changed by the parties, Hardwick and Spratt, to a sale of the *land* and timber, and the money was paid (p. 15) to Hardwick.

Afterwards, in 1872, the defendant sold to this Augustus N. Spratt (p. 15) other parts of the land, for which $1,150 was paid.

In September, 1872 (p. 50), the defendant sold the balance of the Eaton land to Mason, Luce & Co. for $22,000. The terms of payment do not appear.

At the time of filing the bill in this cause there was (p. 29) remaining unsold 160 acres of this land, worth $1,600.

It is not disputed that before the expiration of the three years the defendant had been refunded the money he advanced for the land, taxes paid by him, and the interest at ten per cent., except $4,736 05, and he had *then verbally agreed* to sell to A. N. Spratt $7,000 worth of the land, and which agreement was afterwards reduced to writing, and the land was sold for and paid at $7,000, which would over pay the defendant some $2,000 before the three years expired; and the complainant insists that as the defendant *himself* made these sales he must himself assume them as payments on the money he had advanced. In addition to this, in 1872 (p. 50), he sold to Mason, Luce & Co. the balance of the Eaton lands for $22,000.

Before the bill in this case was filed, he, the ~~complainant~~ defendant, had received $27,231 in cash, twice the amount of his advances, with interest, and there was due from Mason, Luce & Co. say $5,000, making over $32,000 proceeds of this land, and 160 acres of the land still on hand.

Second. There were other dealings between these parties.

The complainant had obtained a loan from defendant and secured him by a transfer of lumber which the defendant sold to a man named Noxon, and taken his notes, which were renewed from time to time. A statement (p. 59) was rendered of this business, and it shows a balance of $1,278 to the credit of complainant besides two of the notes of Noxon, $3,000 on hand, and the letter (p. 58) of defendant containing this statement showing $4,778.35 to the credit of complainant, and that if the Noxon notes

were paid they would be applied on notes of complainant, and the land (p. 50), as he, complainant, says, "I have purchased in connection with you."

These Noxon notes were detained by defendant till June, 1874 (p. 51), when he delivered them to complainant, and this was when, and the *first* time, defendant denied that complainant had any interest in these lands (p. 30).

Third. About the 1st of October, 1871, the parties met in Detroit. The complainant had borrowed $6,000 through an attorney named Ward, in Detroit, $2,000 of which was retained by Ward to pay two mortgages to the defendant (p. 61); the balance of this money was to pay defendant the balance for his half of the land; the defendant at complainant's request went to Ward's office and found him busy (p. 42), and he then left the State without seeing complainant again until the next season (p. 30). This meeting was agreed (p. 30) upon to settle up all matters, and the complainant told defendant he was ready to pay the balance on the land (pp. 26 and 27). The defendant went off to avoid a settlement (p. 30). This is not denied by defendant.

The statements in the bill as to sales and agreements to sell timber and the land itself are not disputed, and the defendant's testimony shows the statements to be correct; but he claims the argreement constituted an option merely, and that receipt of the purchase money for the land sold did not amount to payment.

Fourth. The Contract—Its Form and Construction.

It is claimed by the defendant:

1st. That the paper (the contract) is a mere option.

2d. That the complainant was not bound by it.

3d. That the money received by defendant could not apply as payment on the advances by him.

4th. That there has not been any attempt by complainant to perform or accept the option.

First Objection by Defendant to the Contract.

It says the complainant "*may become equally interested in the above lands;*" this means he might become the *owner* of one-half of the land; *it means* upon payment to me of one-half of the purchase money he shall be equally interested as an equal owner. This language "*may become equally interested*" means, I hereby *agree to sell him one-half* of these lands, provided he pays me so and so, which he agrees to do, making a promise for a promise. All contracts for sale of lands read that the purchaser shall be the *owner*, if, or provided, or on the condition, he pays the

same as in this contract, he shall be equally interested if he pays, etc. The word "interested" in this contract can mean nothing but ownership.

Second Objection of Defendant.

The defendant insists that the complainant was not bound to pay by this contract.

The contract was signed by both parties, and it distinctly says "*said Richardson (complainant) is to pay one-half his share in one year and the balance in two years.*"

This is no implied promise, it is a distinct and express promise to purchase and pay.

In Justice vs. Long, 42 N. Y., 493, pp. 498, a written agreement (signed by the vender only), for the sale of personal property, containing the words to be paid "cash on delivery," held that the words "*cash on delivery*" implied a *promise*, and created an obligation to make such payment.

Third Objection by Defendant.

That the money received by defendant could not apply in payment of the advances by him.

What was to become of this money received from the sale of the timber standing on this same land? Suppose enough of the timber was sold by and with the consent of both parties to pay the entire investment, then upon this principle the defendant would keep the money and all the timber and land left.

How could the defendant perform this contract after he had sold, as he did sell, the timber and land, within the life of this contract? The complainant having consented to these sales he must abide by them as so much money received for joint use in place of the timber and land. This is the law also of the case without any agreement.

Fourth Objection by Defendant.

That there has not been any attempt by complainant to perform or accept the option.

The complainant having signed the contract, that of itself operated as an acceptance.

The defendant not only advised with the complainant as to making sales (see pages 24, 25, 39) and about the business generally, complainant cut timber and paid for it as expressed in the contract, and complainant was recognized as interested in the land during the three years by the defendant and until the year 1874, long after the defendant had actually received in cash probably twice the amount expended; then (p. 30) for the first time they met after 1871 (p. 30) he told complainant he had no interest in the lands, and he returned at that time the Noxon notes which he held and could have applied if paid on this land (pp. 50-51).

There was no necessity for the complainant to do more than he did do. He borrowed money and offered to pay any balance due the defendant, but he avoided the complainant (p. 30).

Fifth—The Complainant's Right to a Performance.

The complainant contends that he fully performed, and is entitled to a decree as prayed.

The complainant not having paid any part of the purchase money prior to the date of the contract, the prior verbal understandings are out of the case, and the contract must stand as mere contract for a sale.

A question might have been raised under the "Statute of Frauds" as to whether this contract *itself* is a valid contract for the sale of lands, it not stating the amount of money to be paid, leaving it to be shown by parol, which cannot be done under this statute.

This question cannot arise under the pleadings, as the statute is not set up as a bar to the complainant's bill.

1 Daniels Ch. Pr., Ed. 1871, p. 656.

Sixth—Delay of Complainant, if any.

Time is not mentioned as an essence of the contract. It could not be made essential in this case, and if it was the defendant himself so managed the property that he has, from his own acts, delayed punctual payments.

Wallace vs. Pidge, 11 Paige R., 570.
Brashier vs. Gratz, 6 Wheaton R., 528.
Parkin vs. Thorold, 13 Law & Eq. R., 416

He put it out of his power to perform by making absolute sales of the timber, and received in money within the three years (see statement) all but $2,368.02 of the money, some $8,000, for the complainant to pay, and had besides negotiated to sell and did sell under such negotiations with the consent of complainant (p. 13) within three months (January, '72, p. 14) after the three years expired, a tract of that land for $7,000.

It could not have been expected of the complainant to raise and pay any money when with the money actually paid, and the arrangement made by defendant by which a sale would produce more than sufficient money to pay the whole investment and interest, and leaving on hand over $25,000 of the property besides.

There can be no claim of *delay* when in September, 1871, the parties met in Detroit to settle all matters; the money was borrowed (p. 61) to pay the defendant and he knew it (p. 30), but left evidently to avoid and prevent payment.

No demand of payment was made and no notice of default or forfeiture of contract was made, and no claim it was forfeited till June, 1874, (p. 30).

The bill was filed December 10, 1875, *before* all the land was sold, and before payment in full was made by Mason (p. 50), but the defendant had received his money in full, and received at least $17,000 in excess of his advances, with ten per cent interest, at least two years before the bill in this case was filed.

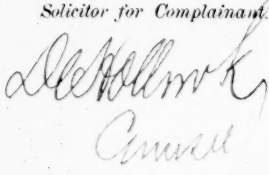
Seventh—The Acts of Defendant are Fraudulent.

The complainant expends his money (p. 20) and time (pp. 16–20) in finding valuable pine lands which he induces the defendant to purchase on shares; he enters into a contract by which parties are to be equally interested in the lands if the defendant is reimbursed his money; the complainant cuts timber and paid $4,050; they mutually agree to sell other timber (pp. 12, 13, 14 and 69) within the time limited for complainant to pay to an amount far exceeding the disbursements of defendant. The complainant and defendant meet in Detroit with the understanding that complainant would pay the balance, if any, for his share of the land, the defendant avoids (p.30) complainant. The defendant leads the complainant on by treating him as joint owner of the land until he gets back his advances and then abandons the complainant with over $25,000 profit.

The money received on sales must be applied as a matter of equity on the advances; if not what becomes of this money? Can the defendant depreciate the land to the amount of money received and beyond his advances, and then call on the complainant for the whole money again?

The sales being made by mutual agreement of parties the proceeds should be applied for their mutual benefit. The complainant insists that he had *some* rights under this contract, and as the proceeds of the property received before he was obliged to pay his half amounts to sufficient to pay the defendant, such proceeds should be taken as a full performance by complainant.

H. H. WELLS,
Solicitor for Complainant.



16-212

SUPREME COURT OF THE UNITED STATES
FILED
SEP 27 1882
JAMES H. MCKENNEY, CLERK

SUPREME COURT OF THE UNITED STATES

No. 83.

ARTHUR R. RICHARDSON, APPELLANT,

vs.

BENJAMIN C HARDWICK.

BRIEF FOR DEFENDANT AND APPELLEE.

ALFRED RUSSELL,
HENRY M. CAMPBELL,
Counsel for Defendant.

SUPREME COURT

OF THE

UNITED STATES.

ARTHUR R. RICHARDSON,
Appellant,
vs.
BENJAMIN C. HARDWICK.

No. 83.

Brief for Defendant Hardwick.

UNDISPUTED FACTS.

In 1868 Hardwick acquired the legal title to the lands set forth in the bill, and paid with his own money the *entire* purchase price. The complainant, Richardson, prior to the acquisition of the lands by Hardwick, had had the minutes of some of them, and had looked a portion of them. He also had some negotiations for their purchase. In recogni-

tion of the services which Richardson performed in regard to the land, Hardwick executed an agreement, Exhibit "B," Oct. 1, 1868, which was as follows:

"The above described lands have been purchased by me under an agreement with Arthur R. Richardson as follows:

It is understood that said Richardson *may become* equally interested in the above lands by paying to me one-half the purchase price of the lands, together with an equal share of all expenditures made by me for taxes or any other purpose, and also ten per cent. interest on all capital furnished by me in connection with his half interest. It is further understood that the purchase price of the lands bought of T. H. Eaton is to be reckoned at ten dollars per acre, and the terms of the above agreement are limited to two years from this date; said Richardson is to pay one-half his share in one year, and the balance in two years.

Alpena, October 1st, 1868.

Arthur R. Richardson may cut timber on the within described lands on the following terms: He is to pay $1.50 (one dollar and a half) per thousand feet, board measure, for all timber cut by him; and he further agrees to cut no less than twelve thousand feet from each and every acre on which he may cut any, in event of his not doing so he agrees to pay per thousand feet the same as though that amount had been cut by him. The logs are to be

holden for the stumpage and to be his when paid for, it being understood that payment is to be made for the same when they come into market.

B. C. HARDWICK,
ARTHUR R. RICHARDSON.

Alpena, Oct. 1st, 1868.

Nothing was ever paid upon this contract, unless one-half of the amount received for stumpage should have been endorsed as payments.

Prior to October 1st, 1870, complainant, under the agreement, cut timber and paid the amount agreed upon. Subsequent to that time defendant sold stumpage and lands to other parties. At the time of filing the bill all the property had been sold except about 240 acres.

RICHARDSON'S CLAIMS.

1. Richardson's first claim, which was however abandoned upon the argument below, was that Hardwick was to advance the purchase price and take title in his own name as security for the payment of the amount by Richardson.

Hardwick denies the agreement, and his testimony certainly carries as great weight as that of Richardson. The burden of proof rests upon the appellant.

The agreement, if it had been made, would have been void under the Michigan statute, abolishing uses and trusts.

2 Mich. Comp. L., 1331–1455.
Fisher vs. Forbes, 22 Mich., 454.

But the written agreement made subsequently disposes of all other agreements or understandings. The rights of the parties must be determined by Exhibit B.

2. Richardson claims that Exhibit B does not contain the entire agreement, but that it was also agreed that one-half of the sales of stumpage should have been endorsed as payments upon the contract; that if so endorsed they would have paid the whole amount due; that if not sufficient he offers to pay the balance.

The effect of such an agreement would be to give Richardson a *vested interest* in the lands, of which he probably could not be deprived by a failure to make payments within the time limited.

The agreement, as written, on the contrary gives Richardson nothing but a naked option. It reads, "*Said Richardson may become equally interested.*" Richardson was not bound by it, and Hardwick, at the expiration of the time allowed for payment, could not have recovered the price named had he elected to sue for it. The provision that the title to logs cut should not pass to Richardson until they were paid for shows, in the clearest manner, how far the idea of any vested interest in the land or timber was from the minds of the parties at the time.

The verbal agreement, even if made, would be inadmissible as contradicting the terms of the writing. It would convert a *simple option* into a *vested right.*

Parol evidence is not admissible to contradict or add to the terms of a written contract, or "*to provide for payment in any other way than that specified in the instrument.*"

Brown vs. Spafford, 95 U. S., 482.
Forsythe vs. Kimball, 91 U. S., 291.
Specht vs. Howard, 16 Wall., 564.
Sprigg vs. Bk. of Mt. Pleasant, 14 Pet., 201.

It is also attempted by the evidence offered by the complainant to change the written contract as to time and manner of payment. The legal effect of the contract as written is that payments shall be made *in cash*, at the *times* specified. Evidence of any different manner of payment conflicts with the writing.

But even if the evidence were admissible, the complainant has failed upon his proof.

The burden of proof is upon him. He testifies positively, that exhibit B. did not contain the entire agreement, (p. 29). There is no other testimony in favor of his claim.

As against his unsupported testimony, there is:

1. The testimony of Hardwick, equally positive that there was no agreement, other than the writing, (p. 46).

2. The contract, even to minute particulars, was in writing. It is highly improbable that so important a part would have been omitted by Hardwick, whom the testimony shows to have been an exceedingly careful and methodical man.

3. The agreement endorsed on exhibit B., allowing Richardson to cut stumpage, and the further agreement, to cut no more stumpage on "land of B. C. Hardwick," (p. 55,) clearly recognize title in the defendant alone.

4. No payments were ever endorsed by Hardwick, which fact was known to complainant, who made no complaint,

5. At the expiration of the option, Richardson made no claim of an interest, but asked for an extension of time.

6. During the whole time Richardson was largely indebted to Hardwick, who was compelled to foreclose to get his money.

7. No claim was set up until several years after, when the property had risen in value and large sales had been made.

8. No claim in definite shape was made until Dec., '75, more than five years after the time for obtaining an interest in the land. Such laches alone is enough to dispose of the case.

Richardson claims that an extension of a year was given by Hardwick at the expiration of the contract, admitting that at that time it had not been paid up, (p. 25).

Hardwick says that he told Richardson, that if he would pay for the interest in the lands and all his other indebtedness, he would extend the time a year;

(p. 40,) the only agreement which a man would be likely to make under the circumstances.

But as whatever extension there was, *was entirely verbal*, it is invalid under the Michigan Law, which provides that no interest in lands shall be created, granted, assigned, surrendered or declared, unless in writing.

2 Comp. L. Mich. 1455.

Even computing the stumpage during the extended time the amount is not sufficient to have paid for the interest complainant claims. It is only by taking sales made much later, after the expiration of the time limited in the contract, and the extension claimed, that such a result can be attained.

Complainant has been guilty of gross laches, which shows that he had no confidence in the claim which he finally set up. It was not till the property had largely increased in value and defendant had made large sales, that he made the claim.

If the property had depreciated, or the timber burned, of which there was great risk, this claim never would have been heard of, and Hardwick could not possibly have held complainant for any share of the loss.

The contract expired Oct. 1, 1870. The bill was filed Dec., 1875. Courts of equity often treat a lapse of time less than that prescribed by the statutes of limitations as a bar, on the ground of discouraging

stale claims, or for gross laches and unexplained acquiescence in the assertion of adverse rights.

2 Story Eq. Jur. 1520.
Smith vs. Clay, Amb. 645.
Sullivan vs. Portland, etc. R. R. Co., 94 U. S., 806, 811.
Hayward vs. Nat. Bk. 96 U. S. 617.
Twin Lick Oil Co. vs. Marbury, 91 id. 537.
Badger vs. Badger, 2 Wall. 87.
Marsh vs. Whitman, 21 id. 178
Harwood vs. R. R., 17 id. 79.

This is the rule in Michigan.

McVickar vs. Piler, 31 Mich., 304. 308.
DeArmand vs. Phillips, Walk Ch. 285.
And cases cited in annotation.

" If the property is of a speculative nature, or of precarious value, it is the duty of the party claiming a right, to assert it at once. He can not remain passive, prepared to affirm the transaction if it prospers, or repudiate it, if it fails.

Harwood vs. Nat. Bk. *Supra.*
Twin Lick Oil Co. vs. Marbury. *Supra.*
Kerr, Mistake & Fraud, p. 302.

The complainant does not set forth in his bill, any impediments to an earlier prosecution of his claim.

Badger vs. Id., 2 Wall., 87.
Godden vs. Kimmell, 99 U. S., 212.

Complainants claim is without equity.

He never paid anything.

He was fully compensated for his trouble in looking some of the lands by the opportunity of becoming interested, and the low rate at which Hard-

wick sold him stumpage, lower than anybody else. (p. 40.)

He never incurred any risk, and would have lost nothing if the entire investment had been destroyed by fire.

He was largely indebted to the defendant during the whole time.

He allowed Hardwick to treat the land as his own, and to make large sales, without protest or making known his claims, and has slept upon his rights, if he ever had any, until the statute of limitations had almost run.

His own testimony, as to his claim, is weak and unsatisfactory, as well as improbable.

Attention is invited to the opinion of the court below. (p. 71.)

The decree dismissing the bill, should be affirmed.

ALFRED RUSSELL,
HENRY M. CAMPBELL,
Of Counsel for Defendant.